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BURDEN OF PROOF FOR NEGLIGENT GROUNDING

Party's failure to comply with Coast Guard regulation of keeping a log is not enough to compel reallocation of burden of proving the time of grounding

Tisbury Towing & Transp. Co., Inc. v. Tug Venus
251 F.3d 298 (1st Cir. 2001)
(Decided June 5, 2001)

Tisbury Towing & Transportation Co. ("Tisbury") owns the barge the ALGOL 500, which it claims was damaged when grounded by the defendant, the Tug Venus. Tisbury sued the Tug Venus and its owner for negligent grounding of the barge and lost at the bench trial, where the judge found that Tisbury had not sustained its burden of proving when the grounding occurred and that the ALGOL 500 had indeed been grounded while being towed by the defendant, Tug Venus.

The owner of the Tug Venus stipulated before trial that its tug had run aground while pushing one of Tisbury's barges one night between June 1 and June 20, 1994, but claimed that it did not know which of Tisbury's three deck barges was involved and furthermore, denied that the barge had sustained any damage from the incident. At trial, Tisbury presented circumstantial evidence suggesting that the grounding occurred on the evening of June 15, the day that only its ALGOL 500 barge was available for towing. Therefore, if the date of the grounding was June 15, it would strongly imply that the Tug Venus had run aground while hauling the ALGOL 500, although the trial court was unable to reach this conclusion, for several reasons.

Both parties concurred that the Tug Venus grounded at Wood's Hole while en route from Martha's Vineyard to New Bedford. One crew member, found very credible by the district court, testified that an incoming tide freed the tug from the ledge it was on and it reached New Bedford on the morning of June 16. However, there are also records indicating that the Tug Venus transported the barge ALGOL 500 to New Bedford from Martha's Vineyard on this date, June 16. These records are not contested by Tisbury. Tisbury does not contend that June 16 could have been the date of grounding because the crew aboard the Tug Venus at that time was not the crew that both parties agree was aboard at the time of grounding. The court found that for the plaintiff's assertion of a June 15th grounding to be accepted, one must also believe that right after arriving at New Bedford after the previous day's grounding,

the Tug Venus turned around and brought the barge back to Martha's Vineyard and then transported it back again to New Bedford later the same day.

The court found this to be physically feasible during this time period, but determined that the scenario was very unlikely because there was no motive to have done so. Plaintiff argues that the defendant may have tried to cover its tracks, that is, to make it appear as though the earlier voyage, during which the grounding occurred, had never happened. The court found little merit and no evidence to support Tisbury's conspiracy theory and found that plaintiff had not sustained its burden of proving the grounding occurred on June 15.

Tisbury argues on appeal that, although its conspiracy theory sounds implausible in the abstract, the circumstantial evidence was so persuasive as to necessitate finding the grounding occurred on June 15. The First Circuit found, however, that although the evidence strongly suggests the date of grounding as argued by the plaintiff, "it is not so impervious to doubt as to render the trial court's judgment clearly erroneous." The court determined that the trial judge was within his discretion when he balanced the circumstantial evidence against the improbable conspiracy theory and double trip and found that the former was not enough to weigh in the plaintiff's favor. That evidence hinged on partly inaccurate and incomplete records and witnesses whose memories were neither clear nor consistent.

Tisbury also argued that the district court should have shifted the burden of proof or production regarding the grounding date to the defendant because it did not record the incident in the tug log, nor did it report it to the Coast Guard as required by Coast Guard regulations (46 C.F.R. §4.05-1), and should not be allowed to benefit from the ensuing dearth of evidence.

Contrasting the fact pattern in the case at bar from those the plaintiff cites in vague support of this contention, the court found no precedent suggesting that a defendant's failure to report an accident affects the allocation of burdens in a case. It distinguished the cases cited by the plaintiff because none of them depended on whether defendant's tug was towing plaintiff's barge at the time of grounding; rather, they asked whether fault should be presumed when the defendant was clearly towing the plaintiff's barge.

The First Circuit affirmed, finding that, as a matter of law, there was no clear error in refusing to find that the grounding occurred on June 15th, nor did the court below err in not reallocating the burdens regarding the time of grounding.

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