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Strong v. B.P. Exploration & Production, Inc. United States Court of Appeals for the 5th Circuit 440F.3d 665 (Decided February 15, 2006)

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A.D.2d 1059, 1059, quoting *Nolechek v. Gesuale*, 46 N.Y.2d 332, 338. The Court further noted that “the owner or possessor of a dangerous instrument is under a duty to entrust it to a responsible person whose use does not create an unreasonable risk of harm to others.” *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 236.

The Court rejected as a matter of law the Di Cerbos’ contention that the boat operated by Christopher was not a dangerous instrument, and held that a genuine issue of fact existed regarding the issue, based on Nicholas Di Cerbo’s admission that the boat could be dangerous if operated in an unsafe manner.

Although the Court agreed with the Di Cerbos that they had established that, to their knowledge, Christopher had always operated the boat in a safe and prudent manner, it concluded that plaintiffs had raised a triable issue of fact whether the Di Cerbos could have “clearly foreseen” that Christopher’s use of the boat could have exposed others to injury or whether they “should have known” that Christopher was likely to use the boat in a dangerous manner. *Rios v. Smith*, 95 N.Y.2d 647, 652; *Larsen v. Heitmann*, 133 A.D.2d 533, 533.

The Court’s finding of the existence of a question of fact rested on the affidavits of three of the Di Cerbos’ neighbors which plaintiffs submitted to the court. These affidavits averred that Christopher had been seen using the boat in a reckless manner on multiple occasions. The affidavits, coupled with Christopher’s admission that his parents’ permission was needed for him to operate the boat, and that while he used the boat they were often present at their cottage, located in close proximity to the water, were held to be sufficient evidence for a factfinder to infer that the Di Cerbos should have known that it was likely for Christopher to use the boat in a reckless manner.

However, the Appellate Division concluded that plaintiffs failed to raise a triable issue of fact whether Morgan “could have clearly foreseen” that Christopher’s use of the boat could have exposed others to injury, or whether Morgan “should have known” that Christopher was likely to use the boat in a dangerous manner, because nothing in plaintiffs’ submissions established that Morgan was present when Christopher operated the boat or that Morgan knew of the neighbors’ complaints; thus there was no evidence from which a factfinder could infer that Morgan should have been aware of Christopher’s reckless operation of the boat.

John D’Ambrosio
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NEGLIGENCE CLAIM ARISING FROM AN ACCIDENT OCCURRING ON A VESSEL NOT “UNDER SAIL” BUT IN NAVIGABLE WATERS CONSTITUTES A MARITIME TORT

Because Plaintiff’s tort claim was time-barred by the three-year statute of limitations under federal maritime law, he could not prevail on his assertion that the Outer Continental Shelf Lands Act incorporated Louisiana’s one-year statute of limitations which, in turn, was tolled while he received benefits under the Longshore and Harbor Workers’ Compensation Act.

Strong v. B.P. Exploration & Production, Inc.
United States Court of Appeals for the 5th Circuit
440 F.3d 665
(Decided February 15, 2006)

Defendant-appellant B.P. Exploration & Production, Inc. (“B.P.”) appealed the district court’s denial of its motion for summary judgment, asserting that appellee’s cause of action in negligence was time-barred.

In October 1998, Amoco Production Company, B.P.'s predecessor-in-interest, hired Cardinal Wireline Services ("Cardinal") to cap an oil well that had been drilled on the outer continental shelf off the coast of Louisiana, but outside the state's territorial limit. Plaintiff-appellee Alan Strong ("Strong") was one of a group of Cardinal employees transported to the Amoco platform by boat. A "liftboat" was jacked up next to the platform to provide additional workspace for well operations.

At the time of Strong's arrival, the deck of the liftboat was crowded with equipment used by an electric line crew that was also laboring at the platform. Because of the crowded conditions, Strong used a crane to swing toolboxes over to another employee. Strong swung a box over to the second employee, who failed to catch it, causing the box to swing back to Strong, who caught it but injured his back.

In February 2003, Strong sued B.P. in federal court for lost wages, pain and injury, and loss of consortium, which he alleged was caused by Amoco's negligence in creating an unsafe work environment. Strong alleged jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA") 43 U.S.C. §§ 1331 *et seq.*, and asserted that Louisiana's one-year statute of limitations for tort claims, incorporated by OCSLA, was tolled while he received benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), and thus his claim was not time-barred.

B.P. moved for summary judgment, arguing that federal maritime law, with its applicable three-year statute of limitations, barred Strong's claim. The district court denied B.P.'s motion without opinion and certified its decision for immediate appeal.

The Court noted that OCSLA applied federal law to structures located on the outer continental shelf ("OCS"), incorporated state law into federal law on the OCS and applied the LHWCA to certain injuries sustained by persons working on the OCS. Neither party disputed that if OCSLA incorporated Louisiana tort law, Strong's action was timely. The Court observed that three conditions must be met before state law is adopted as surrogate federal law under OCSLA: 1) The controversy must arise on a site covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto); 2) Federal maritime law must not apply of its own force; 3) The state law must not be inconsistent with federal law. *Union Tex. Petroleum Corp. v. PLT Eng'g, Inc.*, 895 F.2d 1043, 1047 (5th Cir. 1990). B.P. did not contest Strong's assertion that conditions 1 and 3 had been fulfilled and thus the sole issue for the Court's determination was whether federal maritime law applied of its own force.

46 U.S.C. § 30106 provides that except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose. A party seeking to invoke federal maritime jurisdiction over a tort claim pursuant to 28 U.S.C. § 1333(1) must show conditions of both location and connection to maritime activity. A court applying the location test must determine whether the tort occurred on navigable water, or whether injury on land was caused by a vessel on navigable water. The connection test entails 1) assessing the general features of the type of incident involved to determine whether the incident has a potentially disruptive impact on maritime commerce; and 2) whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

Strong argued that federal maritime law did not apply because his injury resulted from wireline work, which is generally considered nonmaritime in nature. In addition, he alleged that although his injury occurred on a liftboat in navigable waters, the vessel's use was incidental to the wireline work, and, furthermore, that it was Amoco's decision as a platform owner supervising nonmaritime work, rather than its role as a time charterer of the vessel, that caused the deck clutter that led to his injury.

B.P. provided four reasons as to why its alleged negligence was maritime in nature: 1) failure to provide safe working conditions on a vessel is a traditional maritime tort; 2) Amoco's decisions regarding the use of the utility boat and liftboat related to Amoco's role as a charterer; 3) loading and unloading of equipment onto and from a vessel is a traditional maritime activity; and 4) providing compensation for shipboard injuries is a traditional function of the admiralty laws.

The Court of Appeals agreed with B.P. that failing to provide a safe working environment aboard a vessel is a maritime tort. It found that although the liftboat was not “under sail,” it nevertheless qualified as a vessel in navigable waters, thus satisfying *Grubert*’s location requirement. Furthermore, the Court, noting that a shipowner, or charterer in control of a vessel, owes a duty of care to those working on the vessel with respect to the condition of the ship’s gear, equipment, tools and work space observed that the United States Supreme Court has consistently applied maritime law to actions arising out of the failure to perform such duties. Thus, Strong’s claim that his injury arose out of unsafe, cluttered working conditions on the liftboat deck sounded in maritime law.

The Court of Appeals held that because Strong alleged a traditional maritime tort, federal maritime law applied of its own force and precluded the incorporation of Louisiana law under OCSLA. Accordingly, Strong’s claim was time-barred by the three-year statute of limitations, and the court remanded the matter to the district court with instructions to enter summary judgment in favor of B.P.

Daniel Ginzburg
Class of 2007

DISTRICT COURT ERRED IN GRANTING VESSEL OWNERS’ MOTION FOR SUMMARY JUDGMENT IN SUIT BROUGHT SEEKING DAMAGES FOR PERSONAL INJURY

The United States Court of Appeals for the 6th Circuit reversed an order of the district court granting summary judgment in favor of the Defendant vessel owners, stating that there were genuine issues of material fact concerning Plaintiff’s claim of the vessel’s unseaworthiness in violation of general maritime law and claim of negligence in violation of the Jones Act.

Churchwell v. Bluegrass Marine, Inc.
United States Court of Appeals for the 6th Circuit
444 F.3d 898
(Decided April 21, 2006)

Plaintiff Glenda Churchwell was employed as a cook on Defendants’ ship, the *Marie Hendrick*. Plaintiff brought an action in United States District Court for the Western District of Kentucky to recover damages for personal injury sustained during her employment. According to the Plaintiff, she was instructed by a crewman to store excess cooking grease in a metal coffee can. On one occasion, Plaintiff poured grease from the skillet into a coffee can in accordance with those instructions. She then picked up the coffee can by pinching its rim, inserting her thumb into the can while placing her other four fingers on the exterior of the can. Because the interior of the can was covered in grease, the coffee can slipped from her grip and fell onto a mat on the floor. Plaintiff stepped away from the spill, slipped in the grease and sustained injuries to her back.

Plaintiff argued that she would not have dropped the can had she been provided with a container with handles in which to store the grease, and that she would not have slipped if the floor had been properly furnished with a grease mat that had holes to redirect the spilled grease. She also contended that the combination of these two factors created a dangerous work environment that caused the accident and her resulting injuries.

Defendants moved for summary judgment, suggesting that the manner in which the Plaintiff picked up the grease can was negligent and the sole proximate cause of the accident. Defendants also argued they had not breached any legal duty by providing an unreasonably dangerous work environment. The district court granted Defendants’ motion for summary judgment, holding that there