Admiralty Practicum

Volume 2011
Issue 1 *Fall 2011*

Article 6

Alphamate Commodity GmbH v. CHS Europe SA United States Court of Appeals, Fifth Circuit 627 F.3d 183 (Decided November 9th 2010)

Anthony Chiofalo, Class of 2013

The Court affirmed the holding that Menkes had no Fifth Amendment claim, reasoning that "a person cannot have a protected entitlement 'if government officials may grant or deny [the benefit] in their discretion.'"[6] The Court cited 46 C.F.R. § 401.720(b) which permits the Coast Guard to order an unaffiliated, independent pilot to provide pilotage service in a circumstances where the designated association could not do so. This order is at the Coast Guard's discretion. The Court concluded that while Menkes benefitted from SLSPA's inability to provide adequate pilotage, "that, by itself, did not create a constitutionally protected right to continued dispatch . . . ."[7]

Finally, the Court held that Menkes could not sue the Coast Guard on a First Amendment association claim because of issue preclusion. Menkes had already sued the SLSPA for an identical First Amendment claim. The Court noted that "issue preclusion does not require mutuality of parties,"[8] and therefore, Menkes had no case against the Coast Guard for the same cause of action for which he previously sued the SLSPA.

The Court affirmed the holding that Menkes had no First or Fifth Amendment claims, that there was both a state interest in utilizing the voluntary association of pilots in favor of independent contractors, and that there was no compelling evidence that the Coast Guard had acted in bad faith in failing to renew Menkes' independent pilotage.

Nathaniel Chiaravalloti
Class of 2014

DISTRICT COURT LACKED FEDERAL ADMIRALTY JURISDICTION TO ISSUE AND VACATE RULE B MARITIME ATTACHMENT TO SHIPMENT OF CORN

The District Court for the Eastern District of Louisiana lacked admiralty jurisdiction to confer and subsequently vacate an attachment to a shipment of corn, where demurrage and detention claims were not severable from the underlying claim of breach of contract

Alphamate Commodity GmbH v. CHS Europe SA
United States Court of Appeals, Fifth Circuit
627 F.3d 183
(Decided November 9th 2010)

Alphamate Commodity ("Alphamate"), a German international grain merchant, entered into three contracts with Animal Feed Libya ("AFL"), a Libyan company, for the purchase of grain from Europe. AFL did not secure and issue satisfactory letters of credit pursuant to the contracts, which led to a failure to complete the purchases. Alphamate claimed approximately $8 Million in damages from the breach, including $3 million for demurrage and $1 million for unpaid detention.

In addition to arbitrating these claims with the Grain and Feed Trade Association ("GAFTA") in London, Alphamate sought a Rule B maritime attachment against a shipment of corn, which was sold to AFL by CHS, Inc. ("CHS"), aboard the M/V GOLDEN STAR, berthed in Louisiana. At the time the attachment was pending in district court, AFL had not paid CHS for the corn, nor had CHS received a bill of lading.

---

[6] *Id.* at 338 (citing Town of Castle Rock v. Gonzalez, 545 U.S. 748, 756 (2005)).
[7] *Id.*
[8] *Menkes*, 637 F.3d at 334 (citing Gov't of Rwanda v. Johnson, 409 F.3d 368, 374 (D.C. Cir. 2005)).

The district court approved the attachment and CHS intervened, asserting that no title had transferred since there had been no payment for the shipment, and thus it remained the owner of the corn giving Alphamate no rightful claim to it. Alphamate then posted a corporate surety bond as security against any charges, including demurrage and detention, owed to the M/V GOLDEN STAR. The district court, in a Rule E(4) hearing, determined that CHS retained title to the corn and vacated the attachment, stating "[u]nder both the custom and usage recognized by the Fifth Circuit in *Pollux*, the applicable English law, there is no passing of title until payment."[1]

Alphamate appealed, asking the Court of Appeals to determine whether title to the corn had passed to AFL once loaded upon the ship. CHS contended the appeal was both moot because the M/V GOLDEN STAR had presumably sailed and delivered the corn to AFL in Africa and there were no claims against CHS personally, and that the claims were not properly within the court's federal admiralty jurisdiction.

> The Court of Appeals first found that the issue was not moot: "An appellate court normally retains jurisdiction over an *in rem* or *quasi in rem* dispute even if the property in question leaves the jurisdiction."[2] The Court stated that it did not have to retain the ability to order property returned to a successful litigant to issue a valid judgment, and that such a judgment is "useless only if there is no chance that it will provide 'concrete value' to the successful litigant."[3] Because Alphamate posted a $250,000 security bond and sought those damages in the district court, there was still a controversy over who would receive the benefit of the bond.

The Court of Appeals then determined that the district court lacked admiralty jurisdiction since Alphamate did not present a *prima facie* admiralty claim to support its Rule B attachment motion and because the contractual dispute between AFL and Alphamate was not maritime in whole or in severable part.[4] The Court established that a Rule B attachment can only be sought if the underlying claim satisfies admiralty jurisdiction under 28 USC § 1333.[5] In the controversy at issue, the underlying dispute was based on three contracts for the sale of grain. The contracts contained provisions for sea transport to be arranged and paid for by Alphamate, which led Alphamate to contend that the contracts contained a severable maritime obligation. Though conceding that the main purpose of the contracts was in fact the sale of grain, with sea transport incidental to accomplishing such sale, Alphamate stated that the contracts were "mixed," containing both maritime and non-maritime elements. The Court of Appeals reviewed the two circumstances where a 'mixed' contract would give rise to maritime jurisdiction and found neither one was applicable in this case. The first circumstance arises "if the contract is primarily maritime and the non-maritime elements of the contract are incidental to the primary purpose."[6] The Court, noting that the force of these contracts was the sale of grain, rejected this contention. The second circumstance, where a "contract's maritime obligations are separable from its non-maritime aspects and can be tried separately without prejudice to the other"[7] was explored in regards to the demurrage and detention claims and rejected because "[u]nlike the cases where courts have found separable demurrage claims, the Alphamate-AFL contacts did not create an independent obligation in AFL to pay demurrage charges."[8] Because the demurrage claims were intertwined with the

---

[1] Alphamate Commodity GmbH v. CHS Europe SA, 627. F.3d 183, 185 (5th Cir. 2010).
[2] *Id.* (citing Republic Nat. Bank of Miami v. United States, 506 U.S. 80, 87–88).
[3] *Id.* at 186 (citing Elliot v. M/V LOIS B, 980 F.2d 1001, 1005 (5th Cir. 1993)).
[4] *Id.* at 188.
[5] *Alphamate*, 627 F.3d at 186 (citing Proshipline Inc. v. Aspen Infrastructures Ltd., 594 F.3d 681, 687 (9th Cir. 2010)).
[6] *Id.* at 187 (citing Lucky-Goldstar Int'l (America) Inc. v. Phibro Energy Int'l Ltd., 958 F.2d 58, 59 (5th Cir. 1992).
[7] *Id.* (citing *Lucky-Goldstar*, 958 F.2d at 59).
[8] *Id.* at 188.

broader breach of contract claims, they could not properly be separated to confer maritime jurisdiction upon the case.

The Court of Appeals for the Fifth Circuit, though finding that the appeal was not moot, ultimately vacated and remanded the district court's decision based on lack of admiralty jurisdiction.

Anthony Chiofalo
Class of 2013

RIPARIAN OWNERS ON POTOMAC RIVER HAD RIGHT TO LAY FILL AND CONSTRUCT WHARVES SINCE RIPARIAN RIGHTS IN POTOMAC RIVER WERE GOVERNED BY MARYLAND LAW AS IT EXISTED IN 1801, WHICH ALLOWED SUCH ACTIVITIES

The Court of Appeals for the District of Columbia Circuit held that owners of waterfront property on Potomac River had right to lay fill and construct wharves within harbor lines of riverbed despite the United States' ownership of the riverbed

United States v. Old Dominion Boat Club
United States Court of Appeals, District of Columbia Circuit
630 F.3d 1039
(Decided January 11, 2011)

In 1973, the United States brought an action against multiple riparian owners along the Potomac River in Alexandria, Virginia, in order to establish public access to the waterfront.[1] The property in question consisted of the land ceded to the United States by Maryland and Virginia to form the nation's capital. In 1846, after retroceding Alexandria back to Virginia, the United States defined the border of this federally owned riverbed as the high water mark of the Potomac, as it stood on the shore of Alexandria in 1971.[2] The Old Dominion Boat Club ("Old Dominion" or "Appellee") owned property on the reclaimed lands filled after 1791, and accordingly, opposed the United States' action to quiet title and establish public access to the Alexandrian waterfront on its property.

The district court held that although the United States holds fee title to the riverbed to the 1971 high-water mark. As riparian owners, Old Dominion and its predecessors in interest had the right to lay fill and build wharves. In deciding this, the district court employed Maryland law of 1801, because when Congress accepted the land from Maryland, it announced that Maryland law would still be applicable in the lands it had ceded.[3] In 1801, when Congress created a judicial system for Washington D.C., it declared that the laws of Maryland as existed then would govern the lands ceded to the government by Maryland.[4] In reaching this decision, the District Court relied on *U.S. v. Belt*,[5] *U.S. v. Martin*,[6] and *Martin v. Standard Oil Company of New Jersey*.[7] These decisions were all based on the Maryland Court of Appeals' decision in *Baltimore & Ohio Railroad Co. v. Chase*,[8] which stated, "the

[1] Morris v. United States, 174 U.S. 196, 223, 225 (1899).
[2] Act of July 9, 1846, § 1, 9 Stat. 35, 35–36.
[3] Act of July 16, 1790, Ch. 28, § 1, 1 Stat. 130, 130.
[4] Act of Feb. 27, 1801, Ch. 15, § 1, 2 Stat. 103, 103–05.
[5] 142 F.2d 761 (D.C. Cir. 1944).
[6] 177 F.2d 733 (D.C. Cir. 1949).
[7] 198 F.2d 523 (D.C. Cir. 1952).
[8] 43 Md. 23 (1875).