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Case Digest

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CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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1. ADMIRALTY

A TIME CHARTERER IS NOT LIABLE AS OWNER PRO HAC VICE FOR INJURIES INCURRED BY EMPLOYEES OF THE VESSEL'S OWNER IN THE COURSE OF THEIR EMPLOYMENT

Plaintiff seaman was injured in the course of his employment aboard the F/V Golden Scarab, owned by Scarab Fishing Ventures, Ltd. (Scarab), a Canadian corporation. Plaintiff brought suit against Star-Kist Caribe (Star-Kist), the purported charterer of the vessel, alleging the liability of Star-Kist as owner *pro hac vice* for negligence under the Jones Act, unseaworthiness, and maintenance and cure. Noting Star-Kist's role in financing the operation of the Scarab, obtaining plaintiff's employment aboard the vessel, and handling many of the voyage's administratipe details, the district court found Star-Kist exercised sufficient control over the vessel to render them liable for plaintiff's injuries. The court of appeals reversed, distinguishing between a demise charterer and a time charterer. The court, following *Reed v. The Yaka,* 373 U.S. 410 (1963), held that unlike a demise charterer, who contracts for the actual vessel and assumes exclusive possession and control, the time charterer contracts only for a specific service of the vessel, and thus is not liable as owner *pro hac vice.* The Court further noted, relying on *Hansen v. E. I. DuPont DeNemours & Co.,* 33 F.2d 94 (1929), that authority over the manning of a vessel was an important indicia for establishing control, and the presence of Scarab's crew aboard the vessel created a strong presumption that the vessel's owner had not relinquished possession to the charterer. As Star-Kist did not exercise exclusive control over Scarab's

fishing operations, Star-Kist was not liable to the seaman as owner *pro hac vice. Significance*— This decision exempts time charterers from liability as owners *pro hac vice* by construing the "control" necessary for such liability to be actual command, possession, and navigation of the vessel. *Stephenson v. Star-Kist Caribe, Inc.*, 598 F.2d 676 (1st Cir. 1979).

2. ALIEN'S RIGHTS

U.S. VIOLATION OF REGULATION IN DEPORTATION PROCEEDING RENDERS ALIEN'S DEPORTATION UNLAWFUL ONLY IF SUCH VIOLATION PREJUDICED THE ALIEN'S INTERESTS PROTECTED BY THE REGULATION

Two Mexican citizens were separately indicted for illegally reentering the U.S. after their deportations. Their deportations had resulted from separate proceedings conducted by the Immigration and Naturalization Service (INS). Two district courts, dismissing the indictments, reasoned that INS violations of at least one INS regulation in the original deportation proceedings rendered the deportations unlawful. In this consolidated appeal, the Government argued that a regulation violation rendered a deportation unlawful only if such violation denied due process or fundamental fairness in the deportation hearing. The court of appeals reversed and remanded, but disagreed with the reasoning of both the Government and the district courts. The instant court held that a violation of a regulation renders a deportation unlawful only if the violation prejudices the interests of the alien which were protected by the regulation. On remand, if the aliens could successfully demonstrate prejudice from the INS regulation violation, they would be free from prosecution by the Government for illegal re-entry. *Significance*— This decision illustrates an awkward compromise between the application of a due process standard to facilitate deportation and the application of a formal, rule-oriented standard to inhibit such proceedings. *United States v. Calderon-Medina*, ___ F.2d ___ (9th Cir. 1979).

EXTRADITION IS PERMITTED WHEN THE TREATY AMENDMENT COVERING THE ALLEGED OFFENSE WAS IN EFFECT PRIOR TO COMMENCEMENT OF EXTRADITION PROCEEDINGS EVEN IF THE ALLEGED OFFENSE OCCURRED BEFORE THE AMENDMENT'S ENACTMENT

Petitioner, arrested and charged in Canada with importation of hashish oil, fled to the United States prior to trial, whereupon extradition proceedings were begun. The district court refused a writ of habeas corpus on the ground that extradiction was impro-

per, and the court of appeals affirmed. Petitioner alleged that the 1971 amendments to the Webster-Ashburton Treaty of August 9, 1842, 8 Stat. 572 (1872) *as amended,* under which extradition was sought, did not take effect until after the alleged crime was committed. Further, petitioner contended that the new treaty, by its language, indicated that the older treaty, under which the alleged crime was not an extraditable offense, controlled. The court of appeals reasoned that the extradition demands and proceedings occurred subsequent to the amendment's date of effect. Additionally, because the alleged crime was not specifically listed in the unamended threaty, the court held inapplicable the amendment's provision that crimes specifically listed in the older treaty and committed prior to the entry into force of the amendment were extraditable only under the older treaty. *Significance*—This decision follows the trend towards interpreting treaty provisions to permit extradition for crimes committed prior to the effective date of a treaty, provided extradition proceedings were commenced after the treaty's entry into force. *Markam v. Pitchess,* No. 79-2543 (9th Cir. August 7, 1979).

3. INTERNATIONAL TRAVEL

WHERE INFORMATION REGARDING WEIGHT OF SUITCASE CHECKED WITH AIRLINE IS UNDOCUMENTED, LIABILITY LIMITATION OF THE WARSAW CONVENTION DOES NOT APPLY

The defendant airline, a New York corporation, lost luggage belonging to plaintiff, a United States citizen. Although defendant gave plaintiff a "ticket and baggage check" containing a written statement advising that defendant's liability for checked baggage was limited to $20 per kilogram, there was no documentation of the weight of the suitcase. Plaintiff contended that the loss of the contents of the suitcase rendered his overseas trip useless and filed suit in state court for damages in the amount of $192,790. Defendant removed the action to federal court on the basis of diversity of citizenship. Plaintiff filed a motion for partial summary judgment, attempting to establish both that defendant was liable for the lost suitcase and that liability was not limited to $20 per kilogram. Defendant conceded its general liability, but contended that its maximum liability was limited to $20 per kilogram by the Warsaw Convention (Convention), or, in the alternative, that it was premature to determine whether or not the Convention was applicable. The district court held that the Convention controlled. Specifically, Article 4 of the Convention lists information that is to be

included on a baggage check. Subsection 4 of the article clearly states that the absence of any part of this information, including the number and *weight* of all packages, will nullify any attempt by the carrier to avail itself of the minimum liability provisions of Article 22(2). The court granted the partial summary judgment, holding that defendant's failure to comply with the treaty's weight information requirement was fatal to the defendant's attempt to invoke the treaty's artificially low minimum liability provisions. The court reasoned that the plaintiff needed this weight information to determine whether or not he required additional liability coverage. *Significance*—The instant case acknowledges that the Convention was drafted with a bias in favor of air carriers, and therefore, the court was reluctant to disregard the language of the treaty and find for the defendant airline in the absence of compelling justification. *Maghsoudi v. Pan American World Airways, Inc.*, 470 F. Supp. 1275 (D. Hawaii 1979).

4. FOREIGN SOVEREIGN IMMUNITY

CULTURAL EXCHANGE AGREEMENTS INVOLVING PAYMENT CONSTITUTE COMMMERCIAL ACTIVITY AND ARE NOT IMMUNE UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT

An American impressario brought suit against the U.S.S.R., its Ministry of Culture, and the State Concert Society of the U.S.S.R. (Gosconcert) for breach of contracts executed pursuant to a cultural exchange agreement between the United States and the U.S.S.R. The defendants unsuccessfully moved to dismiss, claiming that under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-11, they were immune from suit because the statutory "commercial activity" exception to sovereign immunity did not apply. The court held that the contracts "commercial," not "artistic" or "governmental" activity, on two grounds. First, the cash fees, salaries, and expenses payable to Gosconcert and the artists constituted "sale of a service," which is commercial activity under the House interpretation of the statute. H.R. REP. No. 487, 94th Cong., 2d Sess. 16 (1976). Second, under § 1603(d) of the Act, the purpose of the activity—even if diplomatic—is irrelevant in determining its commercial character. The court noted that the "diplomatic activity" immunity relied on by the plaintiff under *Victory Transport Inc. v. Comisario General,* 336 F.2d 354, 360 (2d Cir. 1964), *cert. denied,* 381 U.S. 934 (1965), had been superseded by the Act. *Significance*—This decision relies on the House Report to establish that sale of a service is commercial activity, thus ex-

empting cultural exchange agreements involving cash payments from the protection of the Act. *United Euram Corp. v. U.S.S.R.*, No. 77-6329 (S.D.N.Y. 1978).