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Case Digest

Law Review Staff

CASE DIGEST

The *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principals 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

LIABILITY LIMITATION IN SHIPPING CONTRACT SUBJECT TO CARRIAGE OF GOODS BY SEA ACT IS NULL AND VOID WHERE CONTRACT PROVIDES SHIPPER NO OPPORTUNITY TO DECLARE CARGO'S HIGHER VALUE PRIOR TO SHIPMENT

A stevedore damaged expensive cargo during loading. Although the shipping contract was for carriage between a port in the continental United States and a United States possession, the contract expressly subjected itself to the provisions of the Carriage of Goods by Sea Act (COGSA), 46 U.S.C. § 1300 et. seq. According to § 1304(5) of COGSA, the liability of the carrier is limited to $500 per package, unless the nature and value of the goods have been declared and inserted in the bill of lading. A clause in the shipping contract expressly limited the carrier's liability to $500 per package, yet failed, on its face, to provide space for declaring an excess valuation. At trial, the sole issue for determination was the measure of damages recoverable under the contract. The stevedore contended that the shipper was aware of its right to declare a higher valuation because of its familiarity with COGSA provisions, and that its failure to do so left the liability limitation clause intact and binding. The district court found that the contract's failure to provide an opportunity to declare a higher value rendered the limitation of liability clause null and void. Having failed to prove that such an opportunity did in fact exist, the stevedore was liable for the full extent of the damages. The court of appeals affirmed, holding that an experienced shipper is not presumed to have knowledge of an opportunity to secure a higher liability limit by reason of his knowledge of COGSA provisions since the bill of

lading is usually a boilerplate form drafted by the carrier and presented for acceptance as a matter of routine business practice to a relatively low level shipper employee. *Significance*—When a shipping contract is governed by COGSA, knowledge of an opportunity to declare a higher valuation is not imputed to a shipper based on his experience and familiarity with the statutory provisions. *Pan Am World Airways v. California Stevedore & Ballast*, 559 F.2d 1173 (9th Cir. 1977).

SHIPOWNER UNABLE TO RECOVER AGAINST MARINE SERVICE CONTRACTOR FOR CARGO DAMAGE WHERE SHIPOWNER FAILED TO REBUT TESTIMONY OF CONTRACTOR'S EMPLOYEE AND INFERENCE DRAWN FROM ISSUANCE OF NATIONAL CARGO BUREAU CERTIFICATE

A shipowner sued a marine contractor for indemnity for cargo damage incurred when two tractors which contractor had secured broke their lashings at sea. The shipowner alleged negligence and breach of warranty of workmanlike service. Whether the cargo was properly secured was the subject of sharp conflict in the evidence at trial. The marine contractor's foreman testified as to the procedures used to secure the tractors. Expert testimony was introduced tending to confirm the fact that the described procedures complied with industry standards. Moreover, the contractor introduced a National Cargo Bureau certificate issued to it as further evidence of its workmanlike performance. On the other hand, admissions to interrogatories by the marine contractor's president suggested that the lashing had been faulty. The district court held that the cargo had been properly secured and that the sufficiency of this procedure was confirmed by the National Cargo Bureau certificate. The court also held that the shipowner had failed to establish the cause of the cargo's release and resulting damage. The court of appeals affirmed, holding that there was no basis for rejecting the trial court's conclusion that the shipowner failed to meet his burden of proving defective performance and causation. The court reasoned that even though a National Cargo Bureau certificate could not conclusively free the contractor from liability for cargo losses, the certificate did provide cumulative support of other evidence that the contractor's securing work met the standards of the industry and was approved by responsible officers of the ship's crew. *Significance*—Issuance of a National Cargo Bureau certificate is not conclusive evidence of workmanlike performance of a marine contractor's duties but does provide cumulative support of other evidence of workmanlike performance. *S.S. Amazonia v. New Jersey Export Marine Carpenters, Inc.*, 564 F.2d 5 (2d Cir. 1977).

2. ALIENS' RIGHTS

STATE DENIAL OF RESIDENT ALIEN'S APPLICATION FOR MINISTERIAL OFFICE ON SOLE GROUND OF ALIENAGE VIOLATES FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

An alien resident in Illinois who had been repeatedly denied state certification as a notary public on the sole ground of alienage brought an action in federal district court to enjoin the state from so denying her application. The statute upon which the state's action was based provided that only a United States citizen could be appointed a notary public. The court held that the statute violated the equal protection clause of the fourteenth amendment, citing *Graham v. Richardson*, 403 U.S. 365 (1971), for the proposition that aliens are a suspect class. The court then applied the strict scrutiny test, citing *Sugarman v. Dougall*, 413 U.S. 634 (1973), and reasoned that although a state has a substantial interest in establishing its own form of government and limiting participation therein to members of the body politic, this interest is less than compelling when the position from which aliens are excluded involves no policy formulation. The court concluded that since the position of notary public was purely ministerial, the state interest in excluding aliens was insufficient to justify unequal treatment. *Significance*—This decision is one of an emerging line of decisions which are applying the analyses of *Richardson* and *Sugarman* to the many statutes which still deny access to ministerial positions on the sole ground of alienage. *Cheng v. Illinois*, 438 F. Supp. 917 (N.D. Ill. 1977).

3. CUSTOMS DUTIES

ACTUAL OWNER OF IMPORTED MERCHANDISE ENTERED BY A CUSTOMHOUSE BROKER HAS STANDING UNDER 19 U.S.C. § 1514(b)(1) TO PROTEST CLASSIFICATION OF THE MERCHANDISE

Plaintiff, the actual owner of imported slot-machines filed a complaint against defendant, United States, protesting the classification of these items for customs duty purposes. At the time of the entry of these items, a customhouse broker hired by plaintiff to assist in the administrative requirements incident to the importation was the importer of record and the nominal consignee. Defendant admitted the improper classification, but filed a motion to dismiss alleging that plaintiff lacked standing to file the protest. Defendant contended that as the owner of imported merchandise the plaintiff was not among those persons authorized to file a protest under 19 U.S.C. § 1514(b)(1) (1970) which provides that

"protests may be filed by the importer, consignee, or any authorized agent of the person paying any charge or exaction . . . ." The Customs Court denied the motion to dismiss and held that plaintiff had standing under 19 U.S.C. § 1514(b)(1). Relying on *Pasco Terminals, Inc. v. United States*, 567 F.2d 976 (1977) and *United States v. Wedeman & Godknecht, Inc.*, 515 F.2d 1145 (1975), the court reasoned that the plaintiff had standing as the "agent of the person paying [the] . . . charge or exaction," *i.e.*, the customs broker. Alternatively, the court based its finding of standing on what it viewed as the sounder *ratio decidendi*. The court ruled that plaintiff could be considered to be "the person paying any charge or exaction" within the meaning of 19 U.S.C. § 1514(b)(1) since he fully reimbursed the customhouse broker for all duties paid. Adopting the reasoning of the opinion in *Patchogue-Plymouth Mills Corp. v. During*, 101 F.2d 41 (1939), the court concluded that even though the statute expressly authorizes only the agent of the person paying such charges it also implicitly authorizes the person himself to file a protest. *Significance*—This decision provides an alternate rationale for and extends the line of decisions broadly construing the statutory definition of persons authorized to protest a customs duty classification. *Bar & Barbeque Products, Inc. v. United States*, ____ F. Supp. ____, No. 75-4-00845 (Cust. Ct. Jan. 16, 1978).

4. JURISDICTION AND PROCEDURE

Quasi In Rem Jurisdiction Over Foreign Corporation Can Be Based on a Prior Attachment of a United States Bank Account Voluntarily Opened to Facilitate Conduct of Business

Executors brought a wrongful death action against a foreign airline to recover damages for a death which occurred in the crash of an aircraft in Turkey. Plaintiffs claimed quasi in rem jurisdiction over defendants based on plaintiffs' prior attachment of defendants' New York bank account, which had been established for the purchase of aircraft parts. Defendant moved to dismiss the complaint for lack of jurisdiction. The District Court held that the Supreme Court's recent holding in *Shaffer v. Heitner*, 433 U.S. 196 (1977), did not preclude quasi in rem jurisdiction because the bank account, which the court assumed had been knowingly and deliberately acquired to facilitate defendants' business operations, was a sufficient contact to subject defendant to the court's jurisdiction. In addition, the court held that quasi in rem jurisdiction requires no finding that the property attached is related to the underlying cause of action. The court noted that contact with the state gave

rise to predictable risks of exposure to suit growing out of those business operations, and therefore, exercise of jurisdiction in this case did not violate the Due Process Clause. *Significance*—This case significantly narrows the scope of *Shaffer*, and may subject all foreign corporations or other persons carrying on any voluntary business activity in the United States to the jurisdiction of United States courts. *Feder v. Turkish Airlines*, 441 F. Supp. 1273 (1977).