Vanderbilt Journal of Transnational Law

Volume 9
Issue 1 *Winter 1976*

Article 4

1976

Case Digest

Journal Staff

CASE DIGEST

The purpose of this *Case Digest* is to identify and summarize for the reader recent cases that have less significance than those that merit an in-depth analysis. Included in the digest are cases that apply established legal principles without necessarily introducing new ones.

The cases are grouped in topical categories, and references are given for further research. It is hoped that attorneys, judges, teachers and students will find that this digest facilitates research in problems involving current aspects of transnational law.

TABLE OF CONTENTS

1. ADMIRALTY

EMPLOYER IS LIABLE AS A *Pro Hac Vice* OWNER FOR NEGLIGENCE OF AN EMPLOYEE ENGAGED IN SERVICES OTHER THAN STEVEDORING

A longshoreman injured while loading a barge sued both the barge owner and his employer for negligence under section 18(a) of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act. Although the district court found by reason of the employer's exclusive possession and control of the barge at the time of the accident that the employer was an owner *pro hac vice*, it granted a summary judgment for the employer, dismissed the employee's negligence action, and rejected the barge owner's claim for contribution. The court of appeals reversed and remanded, holding that the employer as a stevedore was indeed insulated from liability for negligence under subsections 905(a) and (b), but that if the facts demonstrated that the injury arose from negligent services connected with the barge other than stevedoring, then the employer would be liable as a *pro hac vice* owner. Since there was no change in the operative language of the exclusive remedy provision, the court reasoned that Congress had not intended to change the Supreme Court's construction of that provision as enunciated in *Reed v. The Yaka*, 373 U.S. 410 (1963), which

allowed a suit against a *pro hac vice* owner who was also an employer. *Significance* — This decision is the first to determine the relationships between "vessel," "employer," and "owner" under section 905(b) of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act for purposes of negligence liability. *Griffith v. Wheeling-Pittsburg Steel Corp.*, 44 U.S.L.W. 2111 (3rd Cir. 1975).

SUBMERSIBLE OIL STORAGE FACILITY USED IN CONNECTION WITH OFFSHORE DRILLING IS CLASSIFIABLE AS A "VESSEL" WITHIN PROVISIONS OF JONES ACT AND GENERAL MARITIME JURISDICTION

Crew members brought suit against oil field contractor and facility owner under the Jones Act to recover for injuries sustained when a submersible oil storage facility tilted and refloated on its side after an accidental removal of ballast. Plaintiffs contended, and the court held, that the submersible oil storage facility was a vessel. Following its decision in *Cook v. Belden Concrete Products, Inc.*, 472 F.2d 999 (5th Cir. 1973), the court noted that the purpose for which a facility was constructed and the business in which it is engaged are the controlling considerations in determining whether or not the facility is a vessel, and that self-contained motive power is not a requirement for that finding. The court reasoned that the submersible oil storage facility should be classified according to that test, as are submersible drilling barges and mobile drilling platforms. *Significance* — This case extends Jones Act and general maritime jurisdiction to submersible oil storage facilities when the facility's purpose and present use render it a vessel. *Hicks v. Ocean Drilling & Exploration Co.*, 512 F.2d 817 (5th Cir. 1975).

EXCLUSIVE REMEDY PROVISION OF THE PUERTO RICO WORKMEN'S ACCIDENT COMPENSATION ACT DOES NOT APPLY TO A PUERTO RICAN CITIZEN INJURED OUTSIDE THE TERRITORY OF PUERTO RICO

Plaintiff seaman, a citizen of Puerto Rico, was injured aboard his employer's vessel docked in Louisiana. He brought suit for damages against his employer under the Jones Act. The seaman's employer contended that the seaman's exclusive remedy lay under the Puerto Rico Workmen's Accident Compensation Act. Section 21 of the Compensation Act provides that the Act is the sole remedy in suits against an employer who is covered thereby. The court held that the plaintiff had a cause of action under the Jones Act and under general maritime law. The court said that the exclusive

remedy provision of the Compensation Act can override the Jones Act only if authority to do so has been given by Congress, and Congress had not yet given such authority. In granting the government of Puerto Rico control over the island of Puerto Rico and the adjacent waters, Congress did not grant the power to supplant federal maritime law outside those geographical limits. *Significance* — This holding limits the application of the exclusive remedy provision of the Puerto Rico Workmen's Accident Compensation Act to injuries occurring within the geographical limits of Puerto Rico. *Manuel Caceres v. San Juan Barge Co.*, 520 F.2d 305 (1st Cir. 1975).

DETERMINATION OF UNSEAWORTHINESS CAUSED BY CHARACTER OF A PERSON ABOARD IS LIMITED TO CREW MEMBERS' CONDITION

Plaintiff brought an action for wrongful death stemming from the axe murder of a steward aboard defendant shipowner's vessel. Relying on *Boudoin v. Lykes Bros. Steamship Co.*, 348 U.S. 336 (1955), plaintiff contended that the presence of the murderer on board rendered the ship unseaworthy. The court of appeals upheld the lower court's decision and denied recovery, holding that failure to establish that the attack was by a crew member, rather than by a passenger, precluded recovery on the ground of unseaworthiness. This decision is based on the distinction between "things about a ship" that must be reasonably fit, and cargo, which need not. The court reasoned that a murderous passenger was analagous to dangerous cargo, which need not be reasonably fit; therefore, plaintiff must show that the murderer was a crew member rather than a passenger in order to establish unseaworthiness. *Significance* — This case establishes that the condition of passengers aboard, like the condition of cargo, cannot render a vessel unseaworthy, even though the condition of a crew member can. *Smith v. American Mail Line, Ltd.*, ____ F.2d ____ (9th Cir. 1975).

2. COMMON MARKET

EUROPEAN COMMUNITY DIRECTIVE REQUIRES THAT IN THE EVENT OF THE APPOINTMENT OF A SINGLE DIRECTOR, DISCLOSURE MUST BE MADE THAT HE REPRESENTS THE COMPANY ALONE

The Stuttgart Registrar of Companies ordered a local private limited liability firm to state its directors' power of representation, and to indicate, in the event only one director was appointed, whether the sole director alone represented the company. The

company objected in non-adversary proceedings that the required statement was superfluous since, in view of the wording of entries in the register and according to legislation in force, it was clear that if only one director was appointed he alone represented the company. On appeal the Supreme Court of the Federal Republic of Germany found that the relevant statute as amended was designed to bring German law into line with the Council of the European Communities First Directive of March 9, 1968. To ensure that German law would be applied in a manner conforming to the requirements of Community law, the Supreme Court referred the issue to the Court of Justice of the European Communities pursuant to Article 177 of the EEC Treaty. The Court of Justice held that the Directive requires disclosure of the provisions as to representation applicable in the event of the appointment of several directors, or, in the event of the appointment of a single director, that he represents the company alone, even if his authority to do so clearly flows from national law. The Court of Justice reasoned that third parties cannot be expected to have full knowledge of the laws or current commercial practices of other member states and that this interpretation is necessary to facilitate obtaining essential information and to guarantee legal certainty in dealings between companies and third parties. *Significance* — This holding is an outgrowth of the intensification of trade between the Member States following the creation of the Common Market, and mandates the express statement of all relevant company information in official registers or records regardless of whether certain information follows automatically from national legislation or appears self-evident. *In re Firma Friedrich Haaga GmbH*, 2 CCH COMM. MKT. REP. ¶ 8389 (1974).

REQUIREMENT OF HABITUAL RESIDENCE FOR PROVIDING SERVICES WITHIN A MEMBER STATE IS INCOMPATIBLE WITH EUROPEAN ECONOMIC TREATY

Van Binsbergen, a resident of the Netherlands, authorized Kortmann, also a Netherlands resident, to represent him in an unemployment insurance dispute with a Netherlands trade association. During the course of the proceedings, Kortmann transferred his residence to Belgium and from this new residence requested that the Centrale Raad van Beroep (court of last instance in social security matters) forward documents in his client's file to his new address. The registry of the court denied Kortmann's request and cited article 48 of the law on procedure, providing that only persons

established in the Netherlands may act as legal representatives before the Netherlands court. Kortmann maintained that this denial was contrary to the provisions of articles 59 and 60 of the EEC, which provide for progressive abolition of restrictions on the freedom to provide services within the Common Market. The Centrale Raad van Beroep decided to stay the proceedings until the Court of Justice had given an interpretation of these articles. The Court held that legal representatives need not be permanently established within the state where the service is to be provided and that the national law of a Member State cannot, by imposing a requirement as to habitual residence within that state, deny persons established in another Member State the right to provide services, if the rendition of services is not subject to any special condition under the national law. The Court reasoned that an habitual residence requirement would circumvent the Articles' specific purpose to abolish all restrictions. The Court, however, recognized that specific professional standards may be imposed on a person providing the service and are compatible with the EEC if they relate to organization, qualifications, professional ethics, supervision and liability, and are consistently applied to all persons, as long as the person providing the service would escape those rules by being established in another Member State. *Significance* — The case abolishes all discriminatory restrictions on services within the Common Market, except when requirements for professional service are intended to bring about equality of treatment between the nationals of one Member State and the nationals of the other states of the Common Market. *Van Binsbergen v. Bestuur,* 2 CCH COMM. MKT. REP. ¶ 8282 (1974).

3. JURISDICTION

SERVICE OF PROCESS ON FOREIGN GOVERNMENTAL AGENCIES MAY BE EFFECTUATED UNDER F.R.C.P. RULE 83

Plaintiff-appellee was the assignee of construction contracts to build roads in Uruguay for the defendant-appellant, Ministry of Public Works. Plaintiff brought a breach of contract action in a California federal district court, in which the defendant challenged the service of process, moved for dismissal, and filed a document of withdrawal. A default judgment was entered. The appellant contended that service was inadequate, that the court lacked personal jurisdiction, and that the choice of a Uruguayan forum clause in the contract precluded American disposition of the case. The court held that the choice of forum clause controlled, following *The*

Breman v. Zapata Off-Shore Co., 497 U.S. 1 (1972). In dicta, the court stated that service upon a foreign governmental agency could be achieved by procedure fashioned by a district judge under F.R.C.P. Rule 83 if "reasonably calculated to give actual notice." *Significance* — The standard for adequate notice to a foreign governmental agency is F.R.C.P. Rule 83. *Republic International Corp. v. Amco Engineers, Inc.*, 516 F.2d 161 (9th Cir. 1975).

EXTRATERRITORIAL SECURITIES VIOLATIONS REQUIRE SIGNIFICANT DIRECT IMPACT ON UNITED STATES TO WARRANT SUBJECT MATTER JURISDICTION

Through a finance and development organization, the Canadian provincial government of Manitoba contracted with a Canadian corporation, which was completely, and allegedly covertly, owned by a United States citizen, to purchase, develop, and operate a forestry complex in exchange for timber concessions. Alleging fraud, the S.E.C. based jurisdiction on stateside acts, which included negotiation meetings, transfers of funds, domestic incorporation of involved parties, and use of interstate commerce. The defendants contended that the transactions were essentially foreign and without significant impact on the United States, and that by conferring jurisdiction, the court would ignore the manifest intent of Congress. The court examined the intent of Congress shown in the Securities Act of 1933 and the Securities Exchange Act of 1934 and held that the domestic impact was not direct and significant enough to warrant implementation of subject matter jurisdiction. The denial was based on findings that the investment was made by a single Canadian entity, that the securities were neither traded on the American market nor exposed to American investors, and that all but one of the contracts were executed extraterritorially. *Significance* — This decision articulates a general discretionary reluctance on the part of the court to find subject matter jurisdiction in the absence of a clear statement of legislative intent by the Congress. *Securities and Exchange Commission v. Kasser*, 391 F. Supp. 1167 (1975).

4. LAW OF THE SEA

LOWER COOK INLET IS NOT AN HISTORIC BAY AND CONSEQUENTLY TITLE TO SUBMERGED LANDS IN THE AREA IS IN THE UNITED STATES, NOT ALASKA

The State of Alaska offered submerged lands in lower Cook In-

let for oil and gas leases. The United States, contending it had rights to the lower inlet superior to Alaska's because the lower inlet constituted high seas, brought suit to quiet title and for injunctive relief. Overruling the ninth circuit, the Supreme Court held that lower Cook Inlet was neither an historic bay nor under the jurisdiction of Alaska because the evidence proffered was insufficient to show that Alaska traditionally asserted and maintained dominion over the lower inlet with the acquiescence of foreign nations. *Significance* — This case decides the question, important to energy companies as well as the governments involved, of whether lower Cook Inlet is an historic bay and which government shall control the lands submerged below it. *United States v. Alaska,* 95 S. Ct. 2240 (1975).

5. SHIPPING

CARGO CONSIGNEE LIABLE FOR CONTRIBUTION TO CARRIER WHERE DE FACTO JASON CLAUSE FOUND IN VOYAGE CHARTER

Plaintiff carrier's negligence caused the Captayannis "S" to run aground, leaving the cargo intact but rendering the ship a constructive total loss. Carrier sought to compel contribution in general average from defendant cargo consignee on the basis of the voyage charter. Defendant contended that it was not liable for contribution in general average in the absence of a Jason Clause in the bills of lading. The court recognized that bills of lading normally constitute a complete statement of the contract of carriage, but nevertheless held the defendant liable for contribution. The holding was based on a finding that the voyage charter contained a *de facto* Jason Clause of which defendant had notice, and upon the privity of defendant to the entire contract of carriage including the voyage charter. *Significance* — This holding extends the liability of a cargo consignee to the shipper for contribution in general average when the consignee has notice of a Jason Clause set forth in a voyage charter to which the consignee was privy. *Sarantex Shipping Co. v. Wilbur-Ellis Co.*, 391 F. Supp. 884 (D. Ore. 1975).

6. TAXATION

INTERNAL REVENUE CODE SECTION 911(a)(1) PERMITS THE EXCLUSION OF INCOME EARNED ABROAD IF THE TAXPAYER IS A BONA FIDE FOREIGN RESIDENT FOR THE PERIOD FOR WHICH THE RETURN IS MADE

Taxpayer, a United States citizen, was a resident in Argentina

from shortly before January 1 until his death on June 25 of the same year. An income tax return was filed on his behalf for the period January 1 to June 25. The income earned in Argentina by the taxpayer was excluded pursuant to Internal Revenue Code § 911(a)(1), which exempts from taxation income earned abroad by a citizen who is a bona fide resident of a foreign country for an entire taxable year. The Commissioner contended that this exclusion was impermissible because the taxpayer had not been a foreign resident for an entire taxable year, which the Commissioner defined as a minimum 12 month period that includes a full taxable year. The court held that the phrase "taxable year" is a term of art meaning the period for which a return is made. This definition is given in other contexts in sections 441(b)(3) and 7701(a)(23). The court reasoned that Congress must be presumed to have intended the phrase to have a single meaning throughout the Code, absent any indication to the contrary. *Significance*—This holding establishes the meaning of "taxable year" in the foreign income exclusion provision of section 911(a)(1). *Roodner v. Commissioner*, 44 U.S.L.W. 2067 (T.C. 1975).