UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 37 | Number 3 Article 7

4-1-1959

Admiralty -- Limitation of Liability -- Vessel Cast Ashore by Act of God

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NOTES AND COMMENTS

Admiralty—Limitation of Liability—Vessel Cast Ashore by Act of God

In the recent case of *Wong v. Utah Home Fire Ins. Co.*,[1] a federal district court denied a petition for limitation of liability where a private vessel had been cast by a tidal wave onto the plaintiff's property. The defendant insurance company declared the boat a total loss, refused to let the boat owner accept an offer he had for removal, took an assignment of salvage rights, and thereafter made attempts to sell the hulk. Upon defendant's refusal to remove the wreck, plaintiff landowner brought an action for removal and for trespass damages resulting from the failure to remove. Defendant's petition for limitation was denied upon procedural grounds;[2] however, this Note will be limited to the substantive issue of the right to limit liability where a vessel is cast ashore by an Act of God.

Limitation of liability is a federally created right[3] over which the admiralty courts have exclusive jurisdiction.[4] Basically, it enables a shipowner to limit his liability to the value of his ship and pending freight[5] after the complained of incident,[6] where, without privity or knowledge[7] of the owner, his vessel causes personal injury or property damage to another. This limitation is permitted even though the shipowner may be fully indemnified through insurance for the loss of his vessel.[8] Although the original purpose of the limitation doctrine was to foster the commerce and business of the sea,[9] it is now settled that the

[1] 167 F. Supp. 230 (D. Hawaii 1958).

[2] The defendant had failed to comply with Admiralty Rule 51, 28 U.S.C. § 2073 (1952) and 49 STAT. 1480 (1936), 46 U.S.C. § 185 (1952), requiring the petitioner to pay into court, or transfer to a trustee, the minimum value of his interest in the vessel.

[3] REV. STAT. §§ 4283-89 (1875), 46 U.S.C. §§ 183-89 (1952).

[4] Langes v. Green, 282 U.S. 531 (1931); *In re* Great Lakes Transit Corp., 63 F.2d 849 (6th Cir. 1933); The Aloha, 56 F.2d 647 (W.D. Wash. 1932).

[5] Pending freight refers to the earnings of the voyage. The Black Eagle, 87 F.2d 891, 894 (2d Cir. 1937).

[6] City of Norwich v. Norwich & N.Y. Transp. Co., 118 U.S. 468 (1886); The C. F. Coughlin, 25 F. Supp. 649 (W.D.N.Y. 1938).

[7] "The privity or knowledge that excludes the operation of this section must be actual, in the sense of knowledge or authorization, or immediate control of the wrongful acts or conditions, or through some kind of personal participation in them." The Oneida, 282 Fed. 238, 241 (2d Cir. 1922). For a discussion of this term and its applicability, see GILMORE AND BLACK, ADMIRALTY §§ 10-20 to -26 (1957).

[8] City of Norwich v. Norwich & N.Y. Transp. Co., 118 U.S. 468 (1886); The Pere Marquette 18, 203 Fed. 127 (E.D. Wis. 1913).

[9] Moore v. American Transp. Co., 65 U.S. (24 How.) 1 (1861).

privilege extends to the owners of pleasure yachts and other water craft.[10]

The doctrine of limitation of liability is equally applicable whether the damages are consummated on land[11] or on navigable waters, and regardless of the location of the ship causing the damage.[12] The courts have reasoned that the exercise of the privilege is no longer dependent on whether the tort is maritime or nonmaritime, but rather is a privilege given to all shipowners ipso facto, and it is not required that the plaintiff's cause of action be grounded in admiralty for the shipowner to avail himself of this privilege.[13]

Since the privilege of limitation is available to all shipowners, there would appear to be no question of its availability to a defendant whose ship had been negligently navigated or cast upon a plaintiff's property causing damages thereon. Defendant would, of course, be liable for the trespass damage, *but only* to the extent of his limited liability so long as the trespass was without privity or knowledge. However, once the unabandoned vessel is on plaintiff's property and there has been an unheeded demand for removal, defendant is precluded from limiting his liability for damages occurring after the demand because the damages are now caused with privity or knowledge of the owner.[14]

The preceding background has involved situations where there was an existing liability on the boatowner, and the question was whether this should have been a limited liability. Since it is generally accepted that there is no liability for the Acts of God,[15] and since the initial damages in the principal case were caused by an Act of God, it is clear that there was no liability on the boatowner for the original damage. Thus the question presented by *Wong* is whether there is a liability

[10] Petition of Liebler, 19 F. Supp. 829 (W.D.N.Y. 1937); 49 STAT. 1480 (1936), 46 U.S.C. § 188 (1953).

[11] Richardson v. Harmon, 222 U.S. 96 (1911) (barge collided with the abutment of a railroad drawbridge). The Irving F. Ross, 8 F.2d 313 (D. Mass. 1923) (ashes from a barge impaired the flow of a factory's drainage pipes).

[12] In two relatively recent cases the vessels were in winter storage, on land, and caused injuries when they exploded while agents of the owners were performing maintenance on them. In the Matter of Colonial Trust Co., 124 F. Supp. 73 (D. Conn. 1954); The Trim Too, 39 F. Supp. 271 (D. Mass. 1941).

[13] BENEDICT, AMERICAN ADMIRALTY § 116 (6th ed. 1940).

[14] *In re* Pennsylvania R.R., 48 F.2d 559 (2d Cir.), *cert. denied*, 284 U.S. 640 (1931). In this case a barge which had negligently broken loose washed ashore and was causing damage to a boardwalk. The barge owners, although still claiming title, made no effort to remove the barge for four days after notice was given to them, and the court held that they consequently had lost the right to limit liability.

[15] In Louisville Ry. v. Sweeney, 157 Ky. 620, 163 S.W. 739 (1914), it was said that one who trespasses upon another and inflicts an injury is liable for the injury unless caused by the Act of God or produced by causes beyond his control. "A tornado lifts A's properly constructed house from A's land and deposits it on B's land. This is not a trespass." RESTATEMENT, TORTS § 158, comment *e*, illustration (2) (1934).

arising after knowledge of the results of this Act of God, and if so, can it then be limited.[16]

It has been held that an owner of goods may abandon them when they have been cast onto another's property by an inevitable accident.[17] It has likewise been held that the landowner has the right to remove goods so placed on his property, and that upon the chattel owner's *reclaiming* them there arises an implied contract to pay for the cost of such removal.[18] In *Livezey v. Philadelphia,*[19] a case similar to the principal case, but one in which the right to limit liability was not at issue, the position was taken that even for a failure to remove after notice it was not essential to immunity that the chattel owner or his vendee should abandon their interest in the chattel. In that case a bridge had washed onto the plaintiff's land as a result of a flood, and the court, in recognizing that there was an assertion of a claim to the property, said that neither the chattel owner nor his vendee could create a liability for a wrong which they had not committed, and for the consequences of which they could not have been made originally to answer.

The court in the principal case, by dictum, took a position diametrically opposed to the *Livezey* case and indicated that an abandonment would have been necessary to immunity from a subsequent trespass liability. It was reasoned that the defendant had exercised such dominion and control over the wreck that its claim for abandonment could not be sustained, and that it had become a purchaser of the wreck in its then existing condition. It seems to follow that the defendant, with full knowledge of the surrounding circumstances, assumed a duty of removal and consequent responsibility for the trespass damages resulting from the failure to remove. Thus it appears that the defendant assumed the subsequent liability with privity or knowledge as to bar the right to limit liability.

[16] The duty and obligation of a shipowner to remove sunken or wrecked vessels from *navigable waters* is specifically covered by a federal statute and has no apparent bearing to the problem at hand. The Wreck Act, 30 STAT. 1152 (1894), 33 U.S.C. § 409 (1953). This act provides that when a vessel is sunk or wrecked in navigable waters the owner shall mark it, and must maintain such marks until the sunken craft is removed or abandoned; a failure to prosecute immediate removal will be construed as an abandonment. In Petition of Highlands Nav. Corp., 29 F.2d 37 (2d Cir. 1928), the vessels in question had sunk by a pier in navigable waters without fault of the owner. A city ordinance required shipowners to remove such sunken or abandoned vessels or else the city would do it and assess the costs against the owners. It was held that the Wreck Act recognized the right of abandonment given by the general maritime law and that the owner intending to abandon could not be held liable for the cost of raising after abandonment. *Accord,* City of Newark v. Mills, 35 F.2d 110 (3d Cir. 1929), *cert. denied,* 281 U.S. 722 (1930); The Central States, 9 F. Supp. 934 (E.D.N.Y. 1935).

[17] Forster v. Juniata Bridge Co., 16 Pa. 393 (1851). See also, Annot., 41 A.L.R. 1015 (1926).

[18] Tome v. DuBois, 73 U.S. (6 Wall.) 548 (1867). See also, Annot., 55 Am. Dec. 508 (1886).

[19] 64 Pa. 106 (1870).

There is an appalling lack of authority on the problem of whether there can be a subsequent liability on an owner of chattels cast ashore by an Act of God. Regardless of how this problem is resolved it does not appear that the case will be ripe for a limitation of liability. If there is a subsequent liability the defendant will be faced with privity or knowledge; if there is not a liability there is no cause to limit.[20]

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Corporations—Corporate Action for Mismanagement Precluded Where Sole Stockholder Has No Standing in Equity to Sue

Park Terrace, Inc. v. Burge,[1] a recent case of first impression, has added a third decision to the *Park Terrace* litigation.[2] In the present case the two defendants had been original shareholders of Park Terrace, Inc. The capital structure of the corporation provided that one class of stock would be called "preferred." All the shares of this class were held by the Federal Housing Administration.[3] In addition there were two other classes of stock, Class A and Class B. The Class B

[20] "The doctrine of limitation of liability presupposes that a liability exists which is to be limited, but if no liability exists, there is nothing to limit." In the Matter of Cherokee Trawler Corp., 157 F. Supp. 414, 419 (E.D. Va. 1957).

[1] 249 N.C. 308, 106 S.E.2d 478 (1959). Action was commenced on November 3, 1953.

[2] The first case, Lester v. McLean, 242 N.C. 390, 87 S.E.2d 886 (1955), involved a claim of alleged fraud raised by McLean as a defense to an action brought by the two defendants in the principal case to recover the purchase price of the Class A stock. The court found that there had been no fraud and rendered judgment against McLean.

The second case, Park Terrace, Inc. v. Phoenix Indem. Co., 241 N.C. 473, 85 S.E.2d 677 (1955), *remanded on rehearing*, 243 N.C. 595, 91 S.E.2d 584 (1956), concerned an action brought by the corporation against a building construction company owned by the two defendants in the principal case for alleged failure to build the housing in accordance with FHA specifications. On rehearing the court handed down a unique opinion stating that the legal entity of the corporation was suspended when the number of stockholders was reduced to less than three. This decision was widely criticized. Latty, *A Conceptualistic Tangle and the One- and Two-Man Corporation*, 34 N.C.L. REV. 471 (1956). After this decision the North Carolina Legislature enacted a statute which provided that the existence of a corporation was not impaired by the acquistion of all the shares by one or two persons. N.C. GEN. STAT. § 55-3.1 (Supp. 1957). N.C. Sess. Laws 1957, ch. 550, § 3½, in referring to the amending act, provides: "This Act shall not affect adjudicated rights." In light of this provision, it seems possible to argue that the legal entity of Park Terrace, Inc. was suspended for all purposes by the decision in Park Terrace, Inc. v. Phoenix, *supra*, and thus that the "corporation" would have no standing to bring this present action. However, it is submitted that § 3½ was included only to preclude relitigation by the "corporation" against Phoenix, and was not intended to affect its status with respect to other rights. Thus, Park Terrace, Inc. would be deemed to have had "uninterrupted existence and to have possessed uninterrupted capacity to act as a corporation" in all respects, limited only by the fact that the corporation's rights have been adjudicated as against Phoenix.

[3] In this manner FHA could step in and control the corporation in the event of default in the mortgage which it insured. Upon payment of the mortgage debt, the preferred stock could be redeemed at any time by the corporation.