

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN A. SMITH

v.

C.A. No. 93-0016ML

MAR INCORPORATED AND THE
UNITED STATES OF AMERICA.

MEMORANDUM AND ORDER

On February 9, 1995, this court issued an order accepting Magistrate Judge Lovegreen's report and recommendation granting summary judgment to MAR on two of the three counts contained in plaintiff's Stephen A. Smith's (Smith) complaint. Before the matter was tried MAR filed a motion for reconsideration of this court's order as it pertained to the acceptance of the Magistrate's recommendation to deny summary judgment with respect to count three of the Smith complaint.¹ As a result of recent developments in the law, this court grants MAR's motion for reconsideration.

Facts and Procedural Posture

On March 15, 1991, Smith was injured aboard the vessel TWR-841 while it was in navigable waters. At that time of his injury Smith was chief engineer of the vessel. Vessel TWR-841 was owned by defendant, United States of America (USA), and operated by defendant MAR pursuant to a contract between USA and MAR effective January 1, 1988. The contract

¹This is an admiralty claim. Count 1 was a Jones Act Claim, 46 U.S.C. § 688; Count 2 was an unseaworthiness claim; and Count 3 was a maintenance and cure claim.

provided that MAR was to operate and maintain certain vessels and service crafts supporting projects undertaken by the Naval Underwater Systems Center.

Smith commenced an action against MAR and the USA seeking, from MAR, recovery under the Jones Act, 46 U.S.C. § 688; under the doctrine of unseaworthiness pursuant to General Maritime Law; and for maintenance and cure. As part of his claim for maintenance and cure, Smith alleges that MAR's failure to pay maintenance and cure was without justification, wanton and intentional, thereby entitling him to recover punitive damages and attorney's fees against MAR. As noted above, this court agreed with the Magistrate's report and recommendation granting MAR's motion for summary judgment with respect to counts one and two and denying its motion with respect to count three, MAR's alleged willful and wanton failure to pay maintenance and cure. It is the specific ruling denying MAR's motion for summary judgment with respect to its alleged willful failure to pay maintenance and cure that this court now reconsiders.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The facts must be reviewed in the light most favorable to the non-moving party, drawing all inferences in the non-moving party's favor. LeBlanc v. Great American Insurance Co., 6 F.3d 836 (1st Cir. 1993), cert. denied 114 S. Ct. 1398 (1994). The non-moving party "may not rest upon mere allegations * * *, [he or she] must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The magistrate determined and this court agreed that TWR-841 was a public vessel and that MAR was an agent of the USA at the time Smith was injured. The Suits in Admiralty Act, 46 U.S.C. §§ 741-752 (SAA), and the Public Vessels Act (PVA), 46 U.S.C. §§ 781-790, permit admiralty suits to be brought against the United States for causes of action arising out of the operation of vessels owned or operated by the United States. However, the remedy of an injured seaman aboard a public vessel is exclusively against the United States.

“[W]here a remedy is provided by this Act [46 U.S.C. § 741 et seq.] it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim * * *.” 46 U.S.C. § 745.

Consequently a seamen injured while aboard a public vessel operated by an agent of the United States may only pursue his remedy against the United States. Cruz v. Marine Transport Lines, Inc., 634 F. Supp. 107 (D.N.J. 1986), aff’d, 806 F.2d 252 (3rd Cir. 1986). Any right of recovery against the United States precludes any recovery for the same injury against an agent, even if it was the agent’s conduct that gave rise to the alleged injury. Petition of United States, 367 F.2d 505 (3rd Cir. 1966); see also 46 U.S.C. § 745.

In denying MAR’s motion for summary judgment with respect to its alleged willful and wanton failure to pay maintenance and cure the magistrate relied upon Shields v. U.S., 662 F. Supp. 187 (M.D. Fla. 1987). The Shields court, by dissecting the language of 46 U.S.C. § 745, held that the exclusivity provision did not preclude a seamen from maintaining an action against the vessel’s agent-operator of the United States. Id. at 190-91.

“The exclusivity provision mandates that in cases ‘where a remedy is provided by [the SAA],’ such remedy is ‘exclusive of any other

action by reason of the same subject matter * * * 46 U.S.C. § 745. With regard to the ‘subject matter’ of an arbitrary and willful denial of maintenance and cure benefits, no remedy is provided by the SAA. Thus the plaintiff is not precluded from maintaining an action against the agent of the United States * * *.” Id. at 190.

The Shields court found that the arbitrary handling of insurance benefits was an entirely different subject matter “from the negligent conduct for which the SAA provides a remedy.” Id. In other words, Shields held that the seamen seeks recovery not as a result of any wrongful acts of the agent operating the vessel, but for the arbitrary and willful actions of the agent’s insurance company in processing its insurance claims. Shields concluded that “arbitrary claims handling is an entirely different subject matter from the negligent conduct for which the SAA provides a remedy.” Id. Consequently Shields allowed a seamen to maintain a cause of action against the agent of the United States for its arbitrary and willful denial of maintenance and cure.

At the time of this court’s acceptance of the magistrate’s report and recommendation only four federal court’s had considered whether the exclusivity provision of 46 U.S.C. § 745 barred a seamen’s claim for maintenance and cure against the private-agent operator of a vessel owned by the United States. See Shields v. United States, 662 F. Supp. 187 (M.D. Fla. 1987) (seamen could maintain a cause of action against the private owner despite the language of 46 U.S.C. § 745); Manuel v. United States, 846 F. Supp. 478 (E.D. Va. 1994) (rejecting Shields); Farnsworth v. Sea Land Serv., Inc., 1989 WL 20544 (E.D. La. Mar. 7, 1989) (rejecting Shields); and Henderson v. International Marine Carriers, 1990 A.M.C. 400 (E.D. La. 1989) (following Shields). Since this court’s decision the fourth circuit has specifically rejected Shields. Manuel v. United States, 50 F.3d 1253 (4th Cir 1995); Servis v. United States, 54 F.3d 203 (4th Cir. 1995); accord Abogado v. International Marine Carriers, Inc., 1995 WL 373740 (S.D. Tex 1995).

This court finds that the fourth circuit's Manuel decision well reasoned, logical and more in symmetry with the ramifications of the exclusivity provisions noted in 46 U.S.C. 745.

In Manuel the Fourth Circuit undertook a detailed analysis of the Supreme Court's decisions interpreting the exclusivity provision of the SAA. Manuel, 50 F. 3d at 1257-59. The Manuel court noted that the Supreme Court had undergone several shifts in its interpretation of the provision. Id. Most convincing about the Manuel decision, is its rather common sense conclusion after analyzing Supreme Court precedent and Congressional intent and then specifically rejecting the anomalous Shields decision.

A bad faith claim of failure to pay maintenance and cure is not a free standing cause of action, it arises out of and is dependant upon the underlying claim of maintenance and cure. Manuel, 50 F.3d at 1259-60.

“The SAA provides [the plaintiff] with a remedy against the United States to vindicate his entitlement to maintenance and cure. 46 U.S. C. 742. Because of the exclusivity provision, the remedy provided by the SAA precludes any action against [the agent] that deals with the same subject matter. 46 U.S. C. 745. [Smith's] proposed action against [MAR], although highlighting [MAR's] wrongful handling of his benefits claim, nonetheless arises from his entitlement to maintenance and cure resulting from his injury while employed aboard a ship. Because the SAA provides a remedy by reason of that subject matter, [Smith] cannot bring a maintenance and cure claim against [MAR].” Manuel, 50 F.3d at 1260.

Smith's bad faith failure to pay maintenance and cure is barred because it arises and gains its “life” from the accident aboard the TWR-81 and Congressional intent, as expressed through the exclusivity provision of the SAA, mandates that this type of action must be brought against the United States. By bringing suit against MAR, Smith has ignored the requirements of the

SAA to bring the maintenance and cure action against the United States.

This court is aware of the ramifications of this holding, i.e. that unscrupulous agents of the United States can arbitrarily and willfully refuse to pay an injured seamen's maintenance and cure claim without any fear of retribution. See id. However, the exclusivity provision of 46 U.S.C. 745 acts as the myrmidon in denying claims against agents of the United States. See id. It is not a duty of this court to legislate for Congress; if Congress believes this situation to be unfair it has within its power the right to cure this situation by taking some form of legislative action. See id.

Consequently, Smith's motion for reconsideration is granted. This court reverses its April 21, 1995 order accepting the recommendation of the Magistrate only as it pertains to Smith's failure to pay maintenance and cure claim. The portions of the order accepting the magistrate's recommendation regarding the Jones Act claim and the unseaworthiness claim remain intact.

ENTER:

Mary M. Lisi
United States District Judge

August , 1995.