ALIEN'S UNITED STATES RESIDENCE DETERMINES JURISDICTION UNDER THE JONES ACT

Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919 (5th Cir. 1969)

Plaintiff Zacharias Rhoditis, a Greek seaman, was injured on board a Greek flag-ship, the S.S. Hellenic Hero, in the Port of New Orleans, Louisiana. Plaintiff signed on in Greece, his contract specifying that Greek law should govern any actions arising thereunder. After filing a libel in rem against the Hero under general admiralty jurisdiction, plaintiff discovered that the ship was ultimately owned by Pericles Callimanopolus, a Greek citizen and resident of New York for the past twenty years. Ownership was through Callimonopolus' control of a Greek corporation whose Panamanian subsidiary owned the ship. The ship bore Greek registry. The Greek Corporation is headed by Callimanopolus. It operated in New York, where it had its principal place of business. Pointing to Callimanopolus' United States domicile, the lower court granted plaintiff's motion to convert the suit under general admiralty jurisdiction to a complaint against the two shipping lines[1] under the Jones Act.[2] From an adverse verdict defendants appeal, arguing that the lower court's finding of Jones Act jurisdiction was improper. *Held*: affirmed: The United States domicile of a Greek citizen who owns and operates a Greek corporation, whose principal place of operation is the United States, and who is the ultimate owner of a vessel registered in Greece, justifies application of the Jones Act in a suit brought for an injury sustained on the vessel in a United States port.[3]

The Fifth Circuit began its reasoning by examining the Supreme Court case of *Lauritzen v. Larsen*.[4] There the Court discussed the relevant factors for consideration in determining the application of the Jones Act.[5] The most important of these factors were found to be the

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1 Rhoditis v. Hellenic Lines Ltd., 273 F. Supp. 248 (S.D. Ala. 1967).

2 46 U.S.C. § 688 (1964). Under the Jones Act, the defendant may prove negligence and establish his actual damages, or he may recover scheduled damages merely by showing unseaworthiness. *See generally* Currie, *The Silver Oar and All That: A Study of the Romero Case*, 27 U. CHI. L. REV. 1 (1959).

3 Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919 (5th Cir. 1969).

4 345 U.S. 571 (1953).

5 The Supreme Court outlined seven questions or points of contact which a court must look to in determining whether a Jones Act cause of action is stated in a case involving aliens. They are: the allegiance of the injured seaman, the allegiance of the ship owner; the law of the flag; the place of the tort; the place of the contract; the availability of a foreign forum; and the law

place of the injury, the allegience of the shipowner and the law of the flag.[6] The "cardinal factor", the Supreme Court said, is the law of the flag and, unless "some heavy counterweight appears," it must prevail. The Fifth Circuit points out, however, that both the Supreme Court in *Lauritzen*, and courts subsequently interpreting that decision, have been willing to disregard the flag if it is merely a "flag of convenience." In cases in which the flag is flown only to take advantage of the law of the country in which the ship is registered, the courts have been willing to look to the ultimate ownership of the vessel. The *Rhoditis* court states that these cases differ from the instant case only because in the traditional flag of convenience cases the ship is ultimately owned by citizens of the United States,[7] while in the case before the court, the ship is owned by an alien domiciliary. A resident alien, however, owes temporary allegiance to the United States: if he commits a tort he may be held liable for it; he may be required to serve in the United States military. Because of the similarity of these obligations to those imposed on United States citizens, the Fifth Circuit justified treating the resident alien as if he were a citizen. By doing so it upholds jurisdiction under the Jones Act by analogy to the flag of convenience cases.[8]

In *Lauritzen* the Supreme Court properly recognized that the Jones Act could be construed to apply to all ocean going seamen.[9] This construction, however, would have been unreasonable, and the Court adhered to the traditional doctrine that such acts should be construed to apply "only to areas and transaction in which American law would be considered operative under prevelent doctrines of international law."[10] In *Lauritzen*, as in the instant case, there was no question that the federal government could apply the Jones Act if it so chose.[11] The question was, in light of comity and general international law, should the intent of the legislature be construed as an attempt to apply United States law with such an expansive extraterritorial effect?

of the forum. Lauritzen v. Larsen, 345 U.S. 571, 573 (1953). *See generally* 2 M. NORRIS, LAW OF SEAMEN § 670 (Supp. 1959); Note, *Admiralty and the Choice of Law*: LAURITZEN V. LARSEN *Applied*, 47 VA. L. REV. 1400 (1961).

6. Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919, 923 (5th Cir. 1969). For support for the cout's conclusion, *see* Note, *Admiralty and the Choice of Law*: LAURITZEN V. LARSEN *Applied*, 47 VA. L. REV. 1400, 1404 (1961).

7. 412 F.2d 919, 927-28 (5th Cir. 1969).

8. *Id.* at 926.

9. 345 U.S. 571, 576 (1953).

10. *Id.* at 577.

11. *Id.* at 577-78.

For reasons of comity and in accord with accepted principles of international law, the Supreme Court in *Lauritzen* gave cardinal importance of the law of the flag[12] and denied jurisdiction. But it is not inconsistant with these principles of comity for a United States court, in interpreting the Jones Act, to deny its own citizens the use of a flag of convenience to circumvent the laws of the United States.[13] The *Lauritzen* court recognized this when, in discussing the flag of convenience problem, it pointed out that "a state is not debarred by any rule of international law from governing the conduct of *its own citizens* upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed."[14]

The *Rhoditis* court, however, did not consider the principles of international law, nor the dictates of comity, in extending Jones Act jurisdiction to alien domiciliaries. Temporary allegience conferred by residency was equated with the permanent allegience giving a country the right to control the actions of its citizens even when they have passed beyond its borders.[15] On the basis of this rather nubilous equation the court avoids the main issues presented by the *Rhoditis* suit.

First, the equation of temporary allegience to citizenship is an inadequate basis for the *Rhoditis* holding.[16] Secondly, a proper

12 *Id* at 585-86. *See also* Note, *Admiralty and the Choice of Law*: LAURITZEN V. LARSEN *Applied*, 47 VA. L REV 1400, 1405 (1961).

13 *See generally* Garis v. Compania Maritima San Basilio, 386 F.2d 155 (2d Cir. 1967); Bartholomew v. Universe Tankships Inc., 263 F.2d 437 (2d Cir.), *cert. denied*, 359 U.S. 1000 (1959); Gerradin v. United Fruit Co., 60 F.2d 927 (2d Cir.), *cert. denied*, 287 U.S. 642 (1932); Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320 (S.D.N.Y. 1962); Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A., 168 F. Supp. 236 (S.D.N.Y. 1958); Zielinski v Empressa Honderena de Vapores, 113 F. Supp. 93 (S.D.N.Y. 1953). For a contrary view under the Merchant Seamen's Act, *see* Lopes v. S.S. Ocean Daphne, 377 F.2d 777 (4th Cir. 1964)

14 345 U S 571, 587 (1953), *citing* Skiroites v. Florida, 313 U.S. 69, 73 (1940) (emphasis added).

15 Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919, 924-25 (5th Cir. 1969). The court adopted extensively the reasoning of Judge Waterman's dissent in Tsakonites v. Transpacific Carriers Corp., 368 F.2d 426, 430 (2d Cir. 1966), *cert denied*, 386 U.S. 1007 (1967). As the *Rhoditis* court points out, the facts in *Tsakonites* were identical to those in *Rhoditis*. Hellenic Lines Ltd. v Rhoditis, 412 F.2d 919, 925 (5th Cir. 1969).

16 Alternatively, it is possible to view the opinion as holding that the long-time residency of the defendants, 20 years, moves them from the area of temporary allegiance to the status of a U S citizen for some purposes. There is substantial language to that effect in the *Rhoditis* opinion, *e g* their discussion of the selective service liability of a resident alien. The alternative does not save the case from its substantial difficulties. First, one may see that, had the defendants returned to Greece before the action was brought, their long residency would not have been asserted

standard should be articulated for decisions in such cases—a standard which embodies the principles of comity and international law the *Lauritzen* case applies as guidelines in interpreting the Jones Act.

The United States citizen is subject to the laws of this country no matter where he goes.[17] He is also subject to the laws of the states in which he may travel. He owes them a temporary allegience. But this allegience is lost the moment he leaves their borders.[18] Similarly, an alien residing in this country owes obligation to the law of his "temporary sovereign."[19] He does not, by virtue of his temporary residence, lose the obligation to comply with the laws of his own country, insofar as that country chooses to regulate his activities.[20] It is on the basis of the right of the sovereign to regulate its citizens wherever they go that the Court in *Lauritzen* sanctions the flag of convenience cases.[21] The temporary sovereignty which allows a country in which an alien is resident to conscript him into its army or hold him liable for his torts stops as soon as the alien ceases to be a resident.[22] It is a transient right based only on physical presence, and is the same for a domiciliary who has lived in a foreign state for twenty years as

by the court to make them so like citizens as to be liable in Greece to a judgement, or to claim jurisdiction over them. Although the United States could not get Greece, in an analogous case involving an American citizen, to enforce the judgment, such judgment is valid against the American citizen. From this it may be seen that, in that a Greek tourist would not be liable under the Jones Act by virtue of the temporary allegiance he owes the United States during his tour, there are quanta of temporary allegiance. In this alternative view, *i.e.*, not an equation of resident alien to citizen but liability *as* that of an American citizen by virtue of a quantity of residence, one sees that, no quantum is stated. Absent a legislative determination of the above-mentioned quantum—presumably the courts could not define an exact period without assuming a legislative function—the quantum will remain a relative one. A relative quantum residency test is workable only on a case-by-case basis, and is therefore equally undesirable. Were an exact quantum stated in any case it would be easy to avoid liability by merely shifting residency periodically. Moreover, case by case uncertainty as to jurisdiction under the Jones Act is contrary to the purpose of that Act—establishment of a relatively certain, inexpensive and speedy recovery for maritime workers similar to state workmen's compensation. *See* Comment, 1968 WASH. U.L.Q. 615 (1968); *cf.* Calbeck v. Traveler's Ins. Co., 370 U.S. 114, 122-24 (1962).

17. Blackmer v. United States, 284 U.S. 421, 436-37 (1932); *cf.* MacDonald v. Mabee, 243 U.S. 90 (1917). *See generally* Note, *Operation of American Law Outside the Territorial United States as Established by Judicial Declaration*, 33 NOT. D. LAW. 98 (1957-58).

18. Tomoya Kawakita v. United States, 343 U.S. 717, *rehearing denied*, 344 U.S. 850 (1952); Carlisle v. United States, 83 U.S. (16 Wall.) 147, 154-55 (1872); Fletes-Mora v. Rogers, 160 F. Supp. 215, 218 (S.D. Cal. 1958), and cases cited therein. *See also* 3 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW § 253 at 328 (1942).

19. *See* note 17, *supra*.

20. *See* 2 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW § 137 (1941).

21. Lauritzen v. Larsen, 345 U.S. 571, 587-88 (1953).

22. *See* note 17, *supra*.

for a two week tourist. The allegiance of a domiciliary can not be propery equated with that of the American citizen.

Principles of comity, then, would seem to militate against the result in *Rhoditis*. A contract made by two Greek citizens, stipulating that it should be interpreted by Greek law, and made in Greece, should be interpreted by Greek law.[23] Temporary sovereignty should make no more difference for the foreign domiciliary than for the tourist.

The *Rhoditis* court does seem to attach some significance to the fact that the corporation controlled by Callimanopolus had its principal place of business in the United States.[24] Should this factor be considered as crucial and, combined with the domicile of the corporation's major stockholder, be regarded as sufficient to make up the "heavy counterweight" the Court in *Lauritzen* requires to offset the presumption in favor of the application of the law of the flag?

The principal place of business has been utilized to determine whether the corporation's veil should be pierced in order that the ultimate owner, who was a United States citizen, could be looked to in order for Jones Act jurisdiction to attach.[25] As the precedent stands, then, the only utility of the finding that the principal place of business is in the United States is to facilitate a consideration of the citizenship of the ultimate owner. Clearly, used in this way, the fact that the principal place of business of Hellenic Lines is in the United States is of no use to the plaintiff.

However, the court might have made another use of the "principal place of business" in considering the advisability of applying the Jones Act. The court could have left the citizenship of the owner unquestioned, while instead holding that the ownership of the vessel by a corporation having its principal place of business in New York created a sort of quasi-citizenship for the purposes of the Jones Act,

23 1 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW § 18 (1940). *See also* The Over the Top, 5 F 2d 838, 842 (D. Conn. 1925).

24 Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919, 923 n.7 (5th Cir. 1969). The court looks to the decision in Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320, 325 (S.D.N.Y. 1962).

25 Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320, 325 (S.D.N.Y. 1962) and cases cited therein For cases denying Jones Act jurisdiction when the ultimate owner is found to be a resident alien, *see* Tsakonites v. Transpacific Carriers Corp., 368 F.2d 426 (2d Cir. 1966); Nakken v Fearnley & Eger, 137 F. Supp. 288 (S D.N.Y. 1955) (Norwegian owners did their business in New York city through a wholly-owned subsidiary known as Fearnley & Eger Inc.); Cruz v. Harkna, unreported memorandeum No. 21103, Admiralty Docket No. 176-315, noted in Cruz v Harkna, 122 F. Supp. 288 (S.D.N.Y. 1954) (The court held that it did not have jurisdiction of the Jones Act claim where the ownership was by 23 Estonian refugee owners, many of whom were residents of the United States, but who nevertheless were not citizens of the United States.)

similar to the citizenship conferred by the federal rules on corporations for the purposes of diversity jurisdiction.[26] If the corporation is really a national corporation, but has acquired a corporate charter from a foreign government in order to avoid United States maritime law, then clearly the court would be justified in disregarding the sham.