IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
January 30, 2019

Lyle W. Cayce
Clerk

No. 18-30348

In re: In the Matter of the Complaint of 4-K MARINE, L.L.C., as owner of the M/V Miss Elizabeth, petitioning for exoneration from, or limitation of, liability and CENTRAL BOAT RENTALS, INCORPORATED, as operator of the M/V Miss Elizabeth, petitioning for exoneration from, or limitation of, liability

4-K MARINE, L.L.C., as owner of the M/V Miss Elizabeth, petitioning for exoneration from, or limitation of, liability; CENTRAL BOAT RENTALS, INCORPORATED, as operator of the M/V Miss Elizabeth, petitioning for exoneration from, or limitation of, liability,

Petitioners - Appellants

v.

ENTERPRISE MARINE SERVICES, L.L.C.,

Claimant - Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana

Before WIENER, SOUTHWICK, and COSTA, Circuit Judges.

LESLIE H. SOUTHWICK, Circuit Judge:

This is a maritime case involving an allision. The issue is whether the owner of the stationary, "innocent" vessel must be reimbursed for the medical expenses of an employee who fraudulently claimed his preexisting injuries had resulted from the allision. The district court said "no." We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2015, the M/V TOMMY, a tug owned and operated by the claimant Enterprise Marine Services, LLC, was pushing a flotilla of barges on the lower Mississippi River. Its lead barge made contact with the M/V MISS ELIZABETH, a tug that along with its barges was essentially stationary and near the river's bank. That tug was owned by 4-K Marine and operated by Central Boat Rentals, Inc. ("CBR"). On board the M/V MISS ELIZABETH were the wheelman Prince McKinley and a deck hand named Justin Price. Both alleged they were injured in the allision.

CBR and 4-K Marine jointly filed a petition under the Shipowner's Limitation of Liability Act in the U.S. District Court for the Eastern District of Louisiana. *See* 46 U.S.C. § 30501, *et seq*. We will refer to the two petitioners as CBR. As required by Rule F of the Supplemental Rules for Admiralty or Maritime Claims, the district court issued a notice that all claimants respond. McKinley, Price, and Enterprise Marine all answered. A flurry of claims, cross-claims, and counter-claims followed with each of the crewmen, owners, and operators attempting to recover from one or more of the others.

Only one of those claims is at issue in this appeal, namely, CBR's counter-claim that Enterprise Marine reimburse it for amounts it paid to McKinley for medical expenses under its obligations as his Jones Act employer. CBR paid, and Enterprise Marine reimbursed, $23,485 in maintenance and $5,345.84 in cure to McKinley. CBR also agreed with a surgeon and a hospital to pay for a back surgery on behalf of McKinley, but Enterprise Marine refused to reimburse those expenses on the basis that McKinley's back condition was not the result of the allision.

After a bench trial, the district court found that McKinley's knee problems were caused by the accident. His back problems, though, predated the accident and were unaffected by the allision. The court also found that

McKinley fraudulently withheld "material issues about pre-existing medical conditions and medications both before and after the incident." Based on these findings, the district court held that CBR had no obligation to pay for McKinley's back surgery, and Enterprise Marine had no obligation to reimburse CBR.

Enterprise Marine sought the return of the amounts it had already reimbursed for maintenance and cure that were not related to McKinley's knee problem. The district court refused to grant that relief on the grounds that each party was a sophisticated maritime company, knowledgeable about its obligations and its defenses. Enterprise Marine's failure to make a reasonable investigation earlier in the process meant it would not now be allowed to recoup unnecessary reimbursements to CBR. CBR timely appealed, and there is no cross-appeal.

DISCUSSION

In this appeal from a judgment entered after a bench trial, we review the district court's conclusions of law *de novo* and its factual findings for clear error. *Lewis v. Ascension Par. Sch. Bd.*, 806 F.3d 344, 353 (5th Cir. 2015). CBR argues that maritime principles as well as a contract between the parties compel Enterprise Marine to reimburse McKinley's back surgery regardless of the employee's fraud.[1]

[1] CBR also briefed an equitable estoppel argument on appeal but did not raise the issue in the district court until a post-trial memorandum. The district court ignored the issue in its opinion and judgment. "If an argument is not raised to such a degree that the district court has an opportunity to rule on it, we will not address it on appeal." *F.D.I.C. v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994). Regardless, CBR's argument fails on the merits. CBR had to demonstrate "justifiable reliance" on Enterprise Marine's "conduct or word." *Johnson v. Seacor Marine Corp.*, 404 F.3d 871, 878 (5th Cir. 2005). CBR admits, however, that Enterprise Marine "balked at paying for the surgery" in the "Fall of 2016" and that the surgery did not occur until February 2017. CBR could not have justifiably relied on

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