

[Hall v. Diamond M Co.](#)

United States Court of Appeals for the Fifth Circuit

May 29, 1984

No. 82-3629

Reporter

732 F.2d 1246; 1984 U.S. App. LEXIS 22083

Ralph HALL, Petitioner-Appellant, v. DIAMOND M COMPANY, et al., Respondents-Appellees

out plaintiff's contention that he was a borrowed servant of defendant.

Prior History: **[**1]** Appeal from the United States District Court for the Eastern District of Louisiana.

Outcome

The court reversed the judgment of the district court because defendant contractor was not entitled to summary judgment on the record. There were genuine issues of fact regarding whether plaintiff employee was a seaman under the Jones Act and thus entitled to maintenance and cure. Similarly, there were genuine issues of fact regarding whether plaintiff was a borrowed servant of defendant.

Core Terms

vessel, maintenance and cure, borrowed servant, summary judgment, assigned, offshore, crew

Case Summary

Procedural Posture

Plaintiff employee challenged the decision of the United States District Court for the Eastern District of Louisiana, which granted summary judgment to defendant contractor for plaintiff's claim to recover for injuries incurred on an offshore rigger. The district court held that plaintiff was not a "seaman" within the meaning of the Jones Act and denied his motion for maintenance; and also held that he was not the borrowed servant of defendant.

Overview

On appeal, plaintiff employee contended that the trial court applied an improper standard in determining his status as a seaman for purposes of maintenance; and, that it erred in determining as a matter of law on summary judgment that plaintiff was not defendant contractor's borrowed servant. The court agreed and reversed the district court's order remanding for trial. The district court erred in holding that common ownership or control over the vessel on which plaintiff worked was essential to determining seaman status under the Jones Act. Thus, because the record revealed evidence from which reasonable persons might draw conflicting inferences, a jury determination was necessary on the issue of seaman status. Further, the record did not contain undisputed facts sufficient to rule

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Admiralty & Maritime Law > Maritime Workers' Claims > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Jones Act > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Jones Act > Mariner & Seaman Status

Admiralty & Maritime Law > Maritime Workers' Claims > Maintenance & Cure > General Overview

Admiralty & Maritime Law > ... > Maintenance & Cure > Damages > Availability of Benefits

Admiralty & Maritime Law > Maritime Workers' Claims > Maintenance & Cure > Covered Employees

HN1 Only seamen are entitled to the benefits of maintenance and cure. The standard for determining seaman status for purposes of maintenance and cure is the same as that established for determining status under the Jones Act. Seaman's status is a factual question to be decided by a jury (1) if there is evidence that the injured workman was assigned permanently to a vessel or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was

employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Admiralty & Maritime Law > Maritime Personal Injuries > Maritime Tort Actions > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

HN2 The question of seaman status is a mixed question of law and fact. Therefore, summary judgment is improper except in cases where the underlying facts are undisputed, and the record reveals no evidence from which reasonable persons might draw conflicting inferences about the facts.

Admiralty & Maritime Law > Maritime Personal Injuries > Maritime Tort Actions > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Jones Act > General Overview

Admiralty & Maritime Law > Maritime Workers' Claims > Jones Act > Mariner & Seaman Status

Business & Corporate Compliance > ... > Transportation Law > Water Transportation > Licensing & Registration

HN3 Common ownership or control over the vessels on which the plaintiff worked is not essential to seaman status. The court will not allow employers to deny Jones Act coverage to seamen by arrangements with third parties regarding the vessel's operation or by the manner in which work is assigned.

Admiralty & Maritime Law > Maritime Personal Injuries > Maritime Tort Actions > General Overview

Labor & Employment Law > Employer Liability > General Overview

HN4 The borrowed servant doctrine is the functional rule that places the risk of a worker's injury on his actual rather than his nominal employer. It permits the injured worker to recover from the company that was actually directing his work. It may also determine which of the possible employers ultimately bears the cost of the injury.

Admiralty & Maritime Law > Maritime Personal Injuries > Maritime Tort Actions > General Overview

Contracts Law > Formation of Contracts > General Overview

Contracts Law > Formation of Contracts > Acceptance > Meeting of Minds

Labor & Employment Law > Collective Bargaining & Labor Relations > Labor Arbitration > Discipline, Layoffs & Terminations

Labor & Employment Law > Employer Liability > General Overview

HN5 Among the considerations for determining whether a servant has been borrowed by another employer are: (1) Who has control over the employee and the work he is performing, beyond mere suggestion of details or cooperation? (2) Whose work is being performed? (3) Was there an agreement, understanding, or meeting of the minds between the original and borrowing employer? (4) Did the employee acquiesce in the new work situation? (5) Did the original employer terminate his relationship with the employee? (6) Who furnished tools and place for performance? (7) Was the new employment over a considerable length of time? (8) Who has the right to discharge the employee? (9) Who had the obligation to pay the employee? Although no one of these factors is decisive, and no fixed test is used the central question is whether someone has the power to control and direct another person in the performance of his work.

Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary Judgment > Supporting Materials > General Overview

HN6 In ruling on a motion for summary judgment, the court must indulge every reasonable inference from those facts in favor of the party opposing the motion. And, in order for summary judgment to be granted, the facts and inferences must point so strongly and overwhelmingly in favor of one party, that the court believes that reasonable men could not arrive at a contrary verdict. *Fed. R. Civ. P. 56(c)* requires the court to take into account the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits in considering whether there exists a material issue in dispute.

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(For Diamond M), Hailey, McNamara, McNamara & Hall, Metairie, Louisiana, Michael P. Mentz, Metairie, Louisiana, (For Transocean Contractors), Camp, Carmouche, Palmer, Barsh & Hunter, Brian G. Meissner, Northern Louisiana, for Appellee.

Judges: Rubin and Randall, Circuit Judges, and Sear,

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Opinion by: PER CURIAM

Opinion

[*1247] Plaintiff, Ralph Hall, was injured on November 4, 1981 while employed as an "offshore rigger" by defendant Transocean Contractors ("Transocean"). At the time of plaintiff's injury, Transocean was under contract with defendant Diamond M Company ("Diamond M") to provide the labor and small tools necessary to move the Century, a submersible drilling rig owned by Diamond M and then situated in the Gulf of Mexico.

To assist in moving the drilling rig, Diamond M chartered a vessel, the M/V Point Fortune, specially outfitted with powerful winches for lifting from the ocean floor the heavy anchors which held the drilling [**2] rig in place. Hall was assigned to the anchor-handling crew aboard the vessel and also lived and ate on the vessel. He was injured when one of the cables with which he was working knocked him to the deck of the M/V Point Fortune.

Hall brought suit for negligence under the Jones Act and for maintenance and cure under the general maritime law against his employer, Transocean, and Diamond M, which he alleges to be his pro hac vice employer. He also sued the vessel in rem and Diamond M as its charterer under the general maritime law for unseaworthiness. Thereafter, Hall brought a motion for summary judgment to be recognized as a seaman entitled to maintenance and cure. The district court denied the motion for summary judgment on maintenance and cure; however, plaintiff was instructed to move for an expedited evidentiary hearing on that claim. Following the hearing, the [*1248] trial judge ruled as a matter of law that the plaintiff was not a seaman within the meaning of the Jones Act and denied his motion for maintenance and cure. Diamond M then

moved for summary judgment on the claims against it on the grounds that Hall was not its borrowed servant and that it neither owned [**3] nor operated the vessel. The motion was granted and plaintiff appealed.

On appeal, Hall argues, first, that the trial court applied an improper standard in determining his status as a seaman for purposes of maintenance and cure, and, second, the trial court erred in determining as a matter of law on summary judgment that Hall was not Diamond M's borrowed servant.

SEAMAN'S STATUS

Although he was hired as an offshore rigger, at the time of his employment Hall agreed to work onshore if there was no work available offshore. Up until the date of his injury, plaintiff had worked 128 hours on land and 227 hours offshore. On land, he performed various odd jobs, including painting and sandblasting around the Transocean yard. He spent a few days working at a duck camp. While offshore, he worked exclusively as an anchor-handler. Transocean's employment records indicate that Hall was on his third trip offshore when he was injured. He had worked once previously on the M/V Point Fortune for a few days and before that on another vessel for two days. Testimony at the hearing indicated that the anchor-moving jobs usually lasted from two to five days. The anchor-handlers remained [**4] on the vessel supplied to Transocean the entire time. Because various vessels were supplied to Transocean by its customers, there was no single vessel or particular fleet of vessels to which the anchor-handlers might be assigned.

HN1 Only seamen are entitled to the benefits of maintenance and cure. The standard for determining seaman status for purposes of maintenance and cure is the same as that established for determining status under the Jones Act. *Stokes v. B.T. Oilfield Services, Inc.*, 617 F.2d 1205, 1206 (5th Cir. 1980). In *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959), we held that seaman's status is a factual question to be decided by a jury "(1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its

* District Judge of the Eastern District of Louisiana, sitting by designation.

maintenance during its movement or during anchorage for its future trips."

HN2 The question of seaman status is a mixed question of law and fact. **[**5]** Holland v. Allied Structural Steel Co., Inc., 539 F.2d 476, 479 (5th Cir. 1976). Therefore, summary judgment is improper "except in cases where the underlying facts are undisputed, and the record reveals no evidence from which reasonable persons might draw conflicting inferences about [the] facts" Ardoin v. J. Ray McDermott & Co., 641 F.2d 277, 280 (5th Cir. 1981).

The district judge apparently believed that Hall satisfied the second prong of the *Robison* test. In his reasons, the district judge wrote that "plaintiff was subjected to the perils of the sea as are blue water seamen, and was engaged in classical seaman's work . . ." It was the first prong of the test that Hall failed to satisfy. Specifically, the trial judge found that Hall had not been "assigned permanently to a vessel" as that phrase had come to be understood. Although he recognized that the worker may be a member of a crew of numerous vessels, he found, relying on Bertrand v. International Mooring & Marine, Inc., 517 F. Supp. 342 (W.D.La. 1981), that "to be a member of a crew of numerous vessels requires that the group or fleet of vessels act together or form a recognizable unit." Since **[**6]** there was no connection among the vessels within the pool of vessels on which Hall might be assigned to **[*1249]** work, the Court found that the *Robison* test was not satisfied.

The holding and reasoning of the district court in *Bertrand*, upon which the district court relied, has now been overruled. In Bertrand v. International Mooring and Marine, Inc., 700 F.2d 240, 245 (5th Cir. 1983), we held that **HN3** common ownership or control over the vessels on which the plaintiff worked was not essential to seaman status, reasoning that "we will not allow employers to deny Jones Act coverage to seamen by arrangements with third parties regarding the vessel's operation or by the manner in which work is assigned." Since the record reveals "evidence from which reasonable persons might draw conflicting inferences" a jury determination is necessary on the issue of seaman status.

BORROWED SERVANT

The second issue before us is whether the trial court erred in holding as a matter of law on the record before it that Hall was not a borrowed servant of Diamond M.

We recently explained that **HN4** "the borrowed servant doctrine is the functional rule that places the risk of a worker's **[**7]** injury on his actual rather than his nominal employer. It permits the injured worker to recover from the company that was actually directing his work. It may also determine which of the possible employers ultimately bears the cost of the injury." Baker v. Raymond International, Inc., 656 F.2d 173, 178 (5th Cir. 1981).

HN5 Among the considerations for determining whether a servant has been borrowed by another employer are:

- (1) Who has control over the employee and the work he is performing, beyond mere suggestion of details or cooperation?
- (2) Whose work is being performed?
- (3) Was there an agreement, understanding, or meeting of the minds between the original and borrowing employer?
- (4) Did the employee acquiesce in the new work situation?
- (5) Did the original employer terminate his relationship with the employee?
- (6) Who furnished tools and place for performance?
- (7) Was the new employment over a considerable length of time?
- (8) Who has the right to discharge the employee?
- (9) Who had the obligation to pay the employee?

Gaudet v. Exxon Corp., 562 F.2d 351, 355 (5th Cir. 1977) (citing Ruiz v. Shell Oil Co., 413 F.2d 310, 312-13 (5th Cir. **[**8]** 1969)). Although "no one of these factors, or any combination of them, is decisive, and no fixed test is used to determine the existence of a borrowed-servant relationship . . ." Ruiz v. Shell Oil Co., *supra*, 413 F.2d at 312, in Hebron v. Union Oil Co. of California, 634 F.2d 245, 247 (5th Cir. 1981), we stated that "the central question in borrowed servant cases is whether someone has the power to control and direct another person in the performance of his work."

In support of its motion for summary judgment, Diamond M argued that the following facts were established by the record: (1) plaintiff was an employee of Transocean; (2) Diamond M did not own or operate the M/V Point Fortune; (3) plaintiff took orders only from the Transocean foreman, Ike Thibodeaux, and not from anyone from Diamond M; (4) no one from Diamond M

was aboard the vessel when plaintiff was injured; and (5) Diamond M never directly paid Ralph Hall nor was there any agreement between Diamond M and Transocean for Diamond M to do so.

No contravailing evidence was submitted with plaintiff's opposition memorandum. Instead, he relied on an affidavit previously filed in the record to establish genuine issues **[**9]** of material fact.

On this record, the district judge found "that plaintiff has in no way established that he is Diamond M's 'borrowed servant.'" **HN6** In ruling on a motion for summary judgment, "the court must indulge every *reasonable* inference from those facts in **[*1250]** favor of the party opposing the motion." *AT & T Co. v. Delta Communications Corp.*, 590 F.2d 100, 101-02 (5th Cir.) *cert. denied*, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979). And, in order for summary judgment to be granted, "the facts and inferences [must] point so strongly and overwhelmingly in favor of one party, that the Court believes that reasonable men could not arrive at a contrary verdict" *Boeing Co. v. Shipman*, 411 F.2d 365, 374 (5th Cir. 1969) (en banc); *Baker*, 656 F.2d at 179. *Rule 56(c), Fed.R.Civ.P.*, requires the Court to take into account "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" in considering whether there exists a material issue in dispute. We hold that the record in this case does not contain undisputed facts sufficient to rule out a borrowed servant relationship.

Among the 24 paragraphs **[**10]** of plaintiff's affidavit are the following statements:

"(3) The specified vessels to which I have been assigned as a member of the crew include the M/V Fortune, on which I have spent a substantial part of my time while employed by Transocean Contractors, Inc., and Diamond M Company.";

"(4) The time which I spent aboard the M/V Fortune has been spent as a crew member of the M/V Fortune, working for Diamond M Company and Transocean Contractors, Inc., as a seaman."

"(13) At the time I was injured, I was working for Transocean Contractors, Inc., and doing work of Diamond M Company at the time of my injury."

The record also indicates that Diamond M provided the M/V Point Fortune for Transocean's use and that at the time of his injury plaintiff was engaged in moving a Diamond M rig. Finally, although plaintiff testified at the hearing on maintenance and cure that he took orders only from Ike Thibodeaux, the Transocean foreman, the record is unclear as to whether Thibodeaux received his instructions from Diamond M personnel.

Accordingly, we REVERSE the judgment of the district court, and we REMAND this case for further proceedings not inconsistent with this opinion.