

Win Sheng Marine S. de R.L. v. Pohnpei Port Auth.
20 FSM R. 13 (Pon. 2015)

FSM SUPREME COURT TRIAL DIVISION

WIN SHENG MARINE S. DE R.L.,)	CIVIL ACTION NO. 2014-024
)	
Plaintiff,)	
)	
vs.)	
)	
POHNPEI PORT AUTHORITY,)	
)	
Defendant.)	
_____)	

ORDER GRANTING PARTIAL JUDGMENT

Ready E. Johnny
Acting Chief Justice

Decided: March 17, 2015

APPEARANCES:

For the Plaintiff:	Marstella E. Jack, Esq. P.O. Box 2210 Kolonias, Pohnpei FM 96941
For the Defendant:	Michael J. Sipos, Esq. P.O. Box 2069 Kolonias, Pohnpei FM 96941

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HEADNOTES

Torts – Contribution

Although the double negative in the statute may make it difficult to quickly grasp the statute’s plain meaning, 6 F.S.M.C. 1202(4) bars a tort-feasor’s contribution claim against another tort-feasor when the tort-feasor’s settlement agreement does not extinguish the other tort-feasor’s liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 15 (Pon. 2015).

Torts – Contribution

The statute bars a party from seeking contribution from a joint-tortfeasor when its settlement agreement with the claimants does not extinguish the joint tort-feasor’s liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

Torts – Contribution

When 12 F.S.M.C. 1202(4) would permit the plaintiff to seek contribution from the defendant only if the plaintiff’s settlement with the claimant had extinguished the defendant’s potential liability and when the plaintiff’s complaint clearly states that it did not, the defendant is entitled to judgment in its favor on the plaintiff’s contribution claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

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Admiralty – Ships; Torts – Governmental Immunity; Torts – Negligence – Gross Negligence

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

Torts – Negligence – Gross Negligence

Gross negligence has been construed as requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof. Gross negligence can thus occur in a wide range of circumstances. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

Admiralty – Ships; Torts – Negligence – Gross Negligence

There are a variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

Civil Procedure – Judgment on the Pleadings

Normally, a Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is granted or denied on the entire complaint, but when a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

Civil Procedure – Judgment on the Pleadings; Civil Procedure – Summary Judgment

When matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

Civil Procedure – Judgment on the Pleadings; Civil Procedure – Summary Judgment

The standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 17 (Pon. 2015).

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COURT'S OPINION

READY E. JOHNNY, Acting Chief Justice:

This comes before the court on defendant Pohnpei Port Authority's Motion for Judgment on the Pleadings, filed January 6, 2015, and the plaintiff's Opposition to Motion for Judgment on the Pleadings, filed January 30, 2015. The motion is granted in part. The reasons follow.

I. PROCEDURAL BACKGROUND

On June 23, 2014, the plaintiff, Win Sheng Marine S. de R.L. ("Win Sheng Marine"), a Panamanian fishing boat owner, filed a Complaint for Negligence and Contribution against defendant Pohnpei Port Authority ("Port Authority"). Win Sheng Marine alleged that on July 23, 2012, its fishing vessel *Win Sheng*, was within a compulsory pilot area in Pohnpei harbor and the Port Authority dispatched one of its pilots to navigate and pilot the vessel into port to be berthed at a dock.

As the pilot was maneuvering the vessel alongside the dock, the vessel's master informed the pilot to take caution because he was going too fast and because there was not enough space to berth

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the *Win Sheng*. The Port Authority pilot proceeded to dock the *Win Sheng* despite its master's voiced concerns and, as a result, the *Win Sheng* collided with the *F/V Taiyo Pohnpei*, which was stationary and already alongside the dock. Win Sheng Marine paid damages to the *F/V Taiyo Pohnpei* through a separate agreement that did not extinguish any liability to the *F/V Taiyo Pohnpei* that the Port Authority might have for the collision.

Win Sheng Marine alleges that the Port Authority pilot did not have a valid pilot's license and that the Port Authority knew this and that the pilot was unqualified to pilot a vessel of the type and tonnage as the *Win Sheng*. Win Sheng Marine avers that the Port Authority was grossly negligent and breached its duty to Win Sheng Marine by assigning the *Win Sheng* an unlicensed pilot within a compulsory pilotage area and that the collision was the proximate result of that unlicensed pilot's assignment. Win Sheng Marine also asserts that the Port Authority is statutorily liable to Win Sheng Marine for contribution since it paid settlement damages to the *F/V Taiyo Pohnpei*.

The Port Authority's answer, while denying that the pilot was unqualified, admitted that he was unlicensed but asserted that that was because all pilot licenses in the FSM had lapsed and not been renewed due to problems within the FSM agency that certified qualified pilots. It later moved for judgment on the pleadings. The Port Authority asserts that, based on Win Sheng Marine's pleading alone, Win Sheng Marine is not entitled to any contribution from it because, as alleged by Win Sheng Marine, its settlement with the *F/V Taiyo Pohnpei* did not extinguish any potential Port Authority liability. Win Sheng Marine further contends that it is entitled to judgment on the negligence claim because the pilot was, at worst, merely negligent for not slowing down; because the applicable statute, 19 F.S.M.C. 714, absolves the Port Authority and the pilot from any liability for negligence while acting within the scope of their duties; and because another statute, 19 F.S.M.C. 715(2), provides that a vessel's master retains responsibility for the vessel's proper conduct and safe navigation even though the vessel is "in pilotage charge of an Authorized Pilot."

Win Sheng Marine responds that it pled not negligence, but gross negligence, that the pilot's going too fast and ignoring the master's voiced concerns constitutes gross negligence, and that, while 19 F.S.M.C. 714 absolves the Port Authority from liability for negligence it specifically permits liability for gross negligence and intentional or willful misconduct. Win Sheng Marine contends that the contribution statute is oddly worded and asserts that if its settlement agreement with the *F/V Taiyo Pohnpei* had extinguished the Port Authority's liability, it would not now be able to claim contribution from the Port Authority.

II. ANALYSIS

A. Contribution

Win Sheng Marine misreads or misunderstands the statute. The applicable contribution statute reads:

A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor is he entitled to recover in respect to any amount paid in a settlement which is in excess of what was reasonable.

6 F.S.M.C. 1202(4). The double negative in the statute may make it difficult to quickly grasp the statute's plain meaning. However, as the appellate division has previously held, 6 F.S.M.C. 1202(4) bars a contribution claim against another tort-feasor when the settlement agreement does not extinguish that other tort-feasor's liability. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 89 (App. 1999).

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Put in positive and straight-forward terms, the statute bars a party from seeking contribution from a joint-tortfeasor when its settlement agreement with the claimants does not extinguish the joint tort-feasor's liability. *Id.* In other words, 6 F.S.M.C. 1202(4) would permit Win Sheng Marine to seek contribution from the Port Authority only if Win Sheng Marine's settlement with the F/V *Taiyo Pohnpei* had extinguished the Port Authority's potential liability. Since the complaint clearly states that it did not, Compl. at 3, ¶ 13 (June 23, 2014), the Port Authority is entitled to judgment in its favor on Win Sheng Marine's contribution claim.

B. Negligence or Gross Negligence

The Port Authority contends that Win Sheng Marine's negligence claim is just another claim for contribution disguised as something else. Whether this is so does not matter because the Port Authority and the pilot are statutorily immune from negligence claims for acts done in the scope of their duties. The applicable statute provides:

The Port Authority and an Authorized Pilot shall not be personally liable in any civil proceeding for any damage or loss suffered as a result of any act done by the Port Authority or the Authorized Pilot or for any failure to do anything required to be done by either while acting within the scope of their duties unless such act or omission arises from intentional or willful misconduct, or from gross negligence.

19 F.S.M.C. 714. The Port Authority and the pilot are thus immune from any negligence claim for the pilot's acts or omissions in berthing the *Win Sheng*, but not from a gross negligence claim.

Win Sheng Marine responds that what it pled was gross negligence and asserts that it was a matter of gross negligence for the pilot to proceed too fast, to try to berth the *Win Sheng* where there was not enough room to do so without colliding with the F/V *Taiyo Pohnpei*, and for the pilot to fail to heed the master's warnings. The Port Authority asserts that this was mere negligence and that it takes more than just adding the word "gross" to the complaint for it avoid the Port Authority's statutory immunity.

"Gross negligence has been construed as 'requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof.'" Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006) (quoting PROSSER AND KEETON ON THE LAW OF TORTS § 34, at 212 (5th ed. 1984)). Gross negligence can thus occur in a wide range of circumstances.

In Kansas City Bridge Co. v. M/V Ole Miss, 215 F. Supp. 658, 660-61 (N.D. Miss. 1963), the court found the pilot was grossly negligent in causing a tow to collide with a construction pier when he did not reduce the tow vessel's speed until too close to a bridge with construction work and did not use the vessel's one working searchlight while approaching the bridge towing empty barges. In Compania de Maderas de Caibarien, S.A. v. Queenstown Heights, 220 F.2d 120, 122 (5th Cir. 1955), the court held the *Queenstown Heights* grossly negligent when it was proceeding upriver at excessive speed and its pilot failed to recognize that the *Star of Honduras* was a downbound vessel in a meeting situation; when it failed to keep to the right side of the channel but attempted a starboard-to-starboard passing; and when it failed to heed the *Star's* danger signal and to stop and reverse engines, all of which resulted in the sinking of the *Star of Honduras*. And in The Gansford, 25 F.2d 736, 737 (E.D. La. 1928), the court found the master and bar pilot were "guilty of gross negligence and want of skill in the navigation and operation of the vessel" by proceeding at full speed (10 knots) in a dense fog when they were uncertain of the vessel's exact location, thus imbedding the vessel in a jetty wall. It was also gross negligence and not a mistake of judgment when masters allowed a tow to get out of line with a drawbridge and did not bring the tow back in line before approaching the draw again since

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"[w]hen navigators bring a vessel in collision with a stationary object, a presumption of fault arises." In re Oil Transport Co., 178 F. Supp. 48, 53 (E.D. La. 1959). These cases give a sample of the variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. That may or may not be the case here.

The court therefore concludes that it cannot be determined from the pleadings alone whether the facts as alleged would necessarily constitute gross negligence or mere negligence. Accordingly, the Port Authority is not entitled to judgment on this claim at this stage of the proceedings.

C. *Partial Grant of Motion*

Normally, a Rule 12(c) motion for judgment on the pleadings, unlike a Rule 56(d) summary judgment motion, is granted or denied upon the entire complaint, but when a partial judgment would promote an expeditious disposition of matters placed before the court, it may be granted. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995); Damarlane v. United States, 6 FSM R. 357, 359 (Pon. 1994). Furthermore, when matters outside the pleadings are included in a motion for judgment on the pleadings, the court will treat the motion as a summary judgment motion. Ruben v. Chuuk, 18 FSM R. 425, 428 (Chk. 2012); Mori v. Hasiyuchi, 17 FSM R. 630, 644 (Chk. 2011); Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009). Some statutory matter outside the pleadings was included in the motion and opposition. The result should not differ because the standard for evaluating a motion for judgment on the pleadings is almost identical to that for evaluating a motion for summary judgment. Kyowa Shipping Co. v. Wade, 7 FSM R. 93, 96 (Pon. 1995).

III. CONCLUSION

Accordingly, the motion is granted for the contribution cause of action but denied for the gross negligence claim. There being no just cause for delay, the clerk is directed to enter partial final judgment in Pohnpei Port Authority's favor on the plaintiff's claim for contribution.

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