

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4636
(Summary Calendar)

STAR ENTERPRISE, SAUDI REFINING, INC.,
and TEXACO REFINING & MARKETING
(EAST), INC.,

Plaintiffs-Appellants

versus

M/V SOLENA, ET AL.,

Defendants-Appellees

Appeal from the United States District Court for the
Eastern District of Texas
(1:90-CV-239)

(January 6, 1993)

BEFORE KING, DAVIS, and WIENER, Circuit Judges

PER CURIAM:*

In this admiralty claim, Defendant-Appellant M/V SOLENA, in rem, appeals the district courts denial of its motion for summary judgment against Plaintiff-Appellee Saudi Refining, Inc. (SRI). We find that we lack jurisdiction to review the denial of the motion for summary judgment under 28 U.S.C. § 1292(a)(3) as the denial does not determine the liabilities of the parties. Consequently,

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

we dismiss the appeal.

I. FACTS AND PROCEEDINGS

The underlying facts of this case are not in dispute. On March 26, 1990, the M/V SOLENA, an ocean-going vessel, struck and damaged a dock on the Neches River in Jefferson County, Texas. Eighty percent of the dock was owned by Defendant-Appellee Star Enterprise, a partnership in which SRI maintained a 50% interestSOthus giving SRI a 40% interest in the dock. The owners of the M/V SOLENA ("the vessel interests") conceded negligence and entered into a stipulation that they were liable for all damages that the plaintiffs are legally entitled to recover.

Pursuant to the stipulation of liability, all claims were settled except for the instant one, which involves SRI's claims for consequential damages resulting from the dock damage. Specifically, SRI claims that the dock damage interfered with its use of the dock to supply crude oil to its refining facilities, forcing SRI to use a more expensive carrier (pipeline) to ship the oil.

The vessel interests filed a motion for summary judgment, alleging that SRI was barred from recovering consequential damages because they did not have a "proprietary interest," as required by the rule enunciated in Robins Dry Dock & Repair Co. v. Flint¹ and reaffirmed in Louisiana ex rel. Guste v. M/V/ TESTBANK.² The

¹ 275 U.S. 303 (1927).

² 752 F.2d 1019 (5th Cir. 1985) en banc, cert. denied 477 U.S. 903 (1986).

vessel interests argued in their motion that a 50% interest in a partnership owning 80% of the dock does not constitute a proprietary interest as a matter of law.

The district court denied the motion for summary judgment, finding that the vessel interests had failed to meet their burden of demonstrating that SRI's claim for consequential damages was barred by the rule announced in Robins and TESTBANK. The court also found, however, that SRI, as a general partner in Star Enterprise, owned a 40% interest in the dock, and that this percentage constituted a proprietary interest as a matter of law.

The vessel interests appeal this decision, arguing that the denial of the summary judgment motion is an appealable order under 28 U.S.C. § 1292(a)(3) because it determines their rights and liabilities, leaving nothing to be determined but the quantum of damages. Moreover, they contest the substance of the court's decision that a 40% interest is sufficient to constitute a proprietary interest.

II. ANALYSIS

A. JURISDICTION

The vessel interests assert that we may review the denial of the summary judgment motion under 28 U.S.C. § 1292(a)(3), which states:

The courts of appeals shall have jurisdiction of appeals from: . . . Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.³

³ 28 U.S.C. § 1292(a)(3) (1988).

SRI, on the other hand, insists that review is foreclosed by our decision in Francis v. Forest Oil Corp.,⁴ under the facts of which we held that the district court's denial of a summary judgment motion was not reviewable under § 1292(a)(3). Resolution of the jurisdictional issue requires us to examine the scope of our holding in Francis.

Francis involved an admiralty wrongful death action and a summary judgment motion by the one of the defendants, Petroleum Helicopter, Inc.(PHI), based on two points: (1) the plaintiffs' claims were barred by a release executed by an estate representative, and (2) the plaintiffs claims arose under the Death on the High Seas Act (DOHSA) and not under the Jones Act and Longshore and Harbor Worker's Compensation Act, as alleged by plaintiffs. The district court denied the summary judgment motion, concluding that the release executed by the estate did not bar plaintiffs claims, and allowed the plaintiffs to amend their pleadings to add a DOHSA claim.

PHI appealed, contending that the district court order was appealable under § 1292(a)(3), a contention with which we eventually disagreed. Our decision rested on the narrow scope of § 1292(a)(3), which allows appeal of an interlocutory order in admiralty cases only when such order determines the substantive rights and liabilities of the parties.⁵ We observed that § 1292(a)(3) "was originally designed to permit an immediate appeal

⁴ 798 F.2d 147 (5th Cir. 1986).

⁵ Id. at 149.

where an admiralty court first determined liability issues before receiving evidence on and resolving damages issues. Permitting such an appeal allowed the possibility of avoiding an oftentimes costly and protracted trial of the damages issues."⁶ Moreover, we noted that an interlocutory order rejecting a particular defense is not appealable under § 1292(a)(3).⁷

Despite this discussion in the Francis opinion, however, our decision undeniably reaffirmed the general rule that "whenever an order in an admiralty case dismisses a claim for relief on the merits, it is appealable under section § 1292(a)(3)."⁸ We do not read Francis today as having established a rule that all interlocutory orders denying summary judgment motions are unappealable. Rather, Francis demonstrates that the key inquiry remains whether the order determines the rights and liabilities of the parties. Under this analysis, an order denying a summary judgment motion may determine the parties rights and liabilities in an admiralty case.

The vessel interests argue that the denial of the summary judgment motion in the instant case does just that. They insist that as the vessel interests have stipulated that they would pay damages that the plaintiffs are legally entitled to recover, the court's determination that SRI has a proprietary interest resolves the only issue in dispute except for quantumSOwhether SRI is

⁶ Id. (citations omitted).

⁷ Id. at 150 (citations omitted).

⁸ Id. at 149 (citations omitted).

legally entitled to damages. Thus, they argue, although the district court did not enter a final order, its order denying summary judgment effectively disposed of all the issues of merit other than quantum, thereby making the order appealable. We disagree.

Admittedly, in the instant case the district court's denial of summary judgment is distinguishable from a finding that the movant has failed to carry its burden. Rather, the court makes clear its finding that, as a matter of law, SRI has a proprietary interest. Despite the contentions of the vessel interests, however, this determination does not entirely dispose of the issue of SRI's entitlement to recovery.

The rule of Robins and TESTBANK states only that physical damage to a proprietary interest is a prerequisite to recovery. Thus, the rule draws a "bright line test," pragmatically limiting the doctrine of foreseeability to cases involving physical damage. In other words, an injury that does not result from physical damage to a proprietary interest is deemed unforeseeable as a matter of law. The converse of the rule, however, is not true. I.e., merely showing that there has been physical damage to a proprietary interest does not automatically entitle a plaintiff to recover for all conceivable injuries. The plaintiff still must show that the consequential damages suffered were foreseeable. Even though there can be no foreseeability without physical injuries, the presence of physical injuries does not, in and of itself, prove foreseeability.

The rule so stated, we conclude that the district court has

not determined all rights and liabilities of the parties save only quantum. The vessel interests may still avoid imposition of liability by showing, inter alia, that SRI's damages were unforeseeable despite physical injury to the dock. Consequently, the court's denial of summary judgment is not appealable. Appeal DISMISSED.