IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4911
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

BANDA BOATS, INC., ET AL.,

Defendants,

BANDA BOATS, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
CA 89 2913

(March 25, 1993)

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.[*]

EDITH H. JONES, Circuit Judge:

Banda Boats appeals a judgment against it for costs incurred by the government to raise a sunken barge. Because the district court's findings of fact regarding the existence of a bareboat charter are not clearly erroneous, its conclusion that the

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[*]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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

agreement did not constitute a bareboat charter must stand, and we affirm the judgment.

BACKGROUND

In June 1974 Banda Boats bought the barge SBA-100, an unclassified tank barge, for use as a deck barge. On November 23, 1974, the SBA-100 broke in half and sank while being loaded with sand. At the time of the sinking, the SBA-100 was in the possession and service of Diamond Services, Inc.

In March 1985 a tank barge carrying crude oil struck the sunken SBA-100, resulting in a spill. The U.S. Army Corps of Engineers, previously unaware of the existence of the SBA-100 wreck, determined that it was a hazard to navigation and contracted with Diamond Services to survey and remove the wreck. The removal of the SBA-100 was completed in December 1986, and Diamond Services was paid $76,000 for the job. The government brought suit against Banda Boats, seeking to recover the $76,000 paid to Diamond Services for removal of the SBA-100 as well as approximately $14,000 representing the Corps of Engineers' internal costs incurred for the removal of the SBA-100.

The district court held that Banda Boats was liable to the United States for the costs incurred in removing the SBA-100. The court rejected Banda Boats's assertion that it was not the owner of the SBA-100 for purposes of the Rivers and Harbors Act of 1899, 33 U.S.C. § 401 et seq., because Diamond Services had taken possession of the barge under a demise or bareboat charter. The court also found Banda Boats negligent in failing to discover and

correct defects in the internal structure of the SBA-100. Banda Boats was thus liable as the negligent owner of the SBA-100.

DISCUSSION

On appeal, Banda Boats primarily argues that the district court erred in concluding that the arrangement under which Diamond Services took possession of the SBA-100 was not a bareboat charter. The validity of an alleged bareboat charter is a question of law, which we may review de novo, but that conclusion is based on subsidiary findings of fact that are the basic province of the district court. See In re Admiral Towing & Barge Co., 767 F.2d 243, 249 (5th Cir. 1985). The district court's findings of fact are not clearly erroneous. Nor did the district court erroneously conclude, based on its findings of facts, that no bareboat charter existed under the circumstances presented in this case.

A bareboat charter requires the complete transfer of possession, command, and navigation of the vessel from the owner to the charterer. Agrico Chem. Co. v. M/V Ben W. Martin, 664 F.2d 85, 91 (5th Cir. Dec. 1981); Gaspard v. Diamond M. Drilling Co., 593 F.2d 605, 606 (5th Cir. 1979). A bareboat charter need not be in writing, Agrico, 664 F.2d at 91, but the agreement must vest real possessory rights in the charterer. An at-will agreement is insufficient to establish a bareboat charter. Stevens v. Seacoast Co., 414 F.2d 1032, 1036 (5th Cir. 1969). The district court found that the agreement between Banda Boats and Diamond Services contained no term or duration except a daily option to use the barge. Further, the district court found that nothing in the

agreement restricted Banda Boats's right to terminate the arrangement at will. If Banda Boats could revoke the agreement at will, then no real possessory rights were vested in Diamond Services. "But this is the essential requisite of a demise charter to distinguish it from time and voyage charters and the like." Stevens, 414 F.2d at 1036.

A bareboat charter customarily, though not always, provides for a survey of the vessel on delivery and redelivery to determine any changes in the condition of the vessel and to fix responsibility for any damages to the vessel during the charter. Agrico, 664 F.2d at 92. In this instance no such surveys were ever conducted. Further, the agreement did not require Diamond Services to maintain or repair the SBA-100 during the charter. Nor did the agreement in any way restrict Diamond Services' authority to incur maritime liens against the barge. See Stevens, 414 F.2d at 1036. Given the lack of so many of the traditional indicia of a bareboat or demise charter, the district court did not err in its determination that the agreement in this case did not constitute a bareboat charter.

Turning now to the finding of negligence, Banda Boats is correct to point out that "[u]nseaworthiness alone does not necessarily imply negligence." United States v. Nassau Marine Corp., 778 F.2d 1111, 1115 (5th Cir. 1985). A finding of unseaworthiness, by itself, is insufficient to allow the imposition of liability under the Act. Id. at 1115 n.11. At the same time, a finding of unseaworthiness does not preclude an additional

finding of negligence. Indeed, a particular set of facts supporting an inference of unseaworthiness may also support an inference of negligence. Id. at 1115. Banda Boats admitted at trial that it never inspected the internals of the SBA-100. While there was testimony that this was a common practice with barges near the end of their useful life, there was also testimony indicating that Banda Boats's failure to inspect the SBA-100 was negligent. The district court did not err in its determination that Banda Boats was negligent.

Banda Boats also argues that the district court erred in adopting a broad definition of the term "navigable channel" under 29 U.S.C. § 409. This court has previously held that the purpose of section 409 is to protect other vessels plying the same waters. United States v. Raven, 500 F.2d 728, 732 (5th Cir. 1974), cert. denied, 419 U.S. 1124, 95 S. Ct. 809, 42 L.Ed.2d 824 (1975). Consequently, the government need not show that the barge sunk in a distinct channel, only that the barge sunk in navigable waters and posed an obstacle to navigation or navigable capacity. See id.; Agri-Trans Corp. v. Gladders Barge Line, Inc., 721 F.2d 1005, 1009-10 (5th Cir. 1983). Banda Boats's other claims are also without merit.[1]

[1] Banda Boats also argues that the government's action for recovery of removal costs is barred by laches or the statute of limitations and that it was improper to allow the government to recover internal costs incurred by the Corps of Engineers.

CONCLUSION

For the foregoing reasons, the judgment of the district court holding Banda Boats liable to the government for recovery costs incurred in removing the SBA-100 is **AFFIRMED**.