

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5159
Summary Calendar

DARRELL J. DELANEY and KATHLEEN DELANEY,
Plaintiffs-Appellants,

VERSUS

MERCHANTS RIVER TRANSPORTATION, INC., ET AL.,
Defendants,

HILLMAN BARGE & CONSTRUCTION COMPANY,
Defendant-Appellee.

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

(90-CV 2505)

(February 10, 1994)

Before GARWOOD, SMITH, and DEMOSS, Circuit Judges.

PER CURIAM:*

For the second time, Darrell and Kathleen Delaney appeal a summary judgment in their tort suit against various defendants.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Because we again find no genuine issues of material fact exist, we affirm.

I. BACKGROUND

We provided a thorough recitation of the facts on the first appeal of this case. See Delaney v. Merchants River Transportation, Inc., No. 92-4097 (5th Cir. 1992). A limited review of the facts here will suffice. Darrell Delaney in September 1988 was working as a longshoreman for Lake Charles Carbon at a dock facility located in Louisiana's navigable waters. Lake Charles had contracted with Marine Equipment Management Corp. (MEMCO) to remove coal from a MEMCO barge. Delaney was ascending a ladder that had been lowered into the barge's hopper when the ladder suddenly shifted, causing him to fall. MEMCO's barge was not equipped with a permanent ladder or a portable ladder. The barge also was not equipped with cleats specifically designed to secure a portable ladder. Instead, Lake Charles used its own ladder to provide ingress to and egress from the barge.

Delaney first sued MEMCO, alleging that the barge owner was negligent in not equipping the barge with either a permanent or portable ladder. The district court granted MEMCO's motion for summary judgment in November 1991. We affirmed in July 1992, pointing out that the case was controlled by Ducote v. International Operating Co., 678 F.2d 543 (5th Cir. 1982). In Ducote, we established that an independent contractor -- and not

a barge owner -- has the legal duty of furnishing its employees with temporary ladders while cleaning a barge. Id. at 546.

Meanwhile, Delaney's alternative suit against the barge owner, Hillman Barge & Construction Co. (HBC), was commenced in September 1991, three years after Delaney's injury and nearly one year after the Delaneys filed suit.¹ The Delaneys brought a federal maritime products liability suit against HBC, alleging that HBC defectively designed the barge and that such defects caused Delaney's injuries. The district court granted HBC's motion for summary judgment, holding that the barge was not defectively designed and, even if it was, such defects were not the cause of Delaney's injuries. The Delaneys appeal.

II. DISCUSSION

A. Standard of Review

We review a summary judgment de novo. LeJeune v. Shell Oil Co., 950 F.2d 267, 268 (5th Cir. 1992). Accordingly, summary judgement is appropriate if there is "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

¹The Delaneys' suits against MEMCO and HBC originate from one complaint. The complaint was filed in November 1990 and named only MEMCO. After MEMCO filed for summary judgment in March 1991, the Delaneys amended the complaint to include HBC in September 1991. The district court granted MEMCO's motion for summary judgment in November 1991, and we accepted jurisdiction pursuant to FED. R. CIV. P. 54(b) to appeal the court's ruling. Thus, as of November 1991, the Delaneys' suit against HBC was still pending. See Delaney, No. 92-4097 at 3 n.4.

B. Design Defect

Recognizing that federal maritime law is an amalgam of traditional common law rules, modifications of those rules, and "newly created rules" drawn from state and federal sources, East River Steam Ship Corp. v. TransAmerica Delaval, Inc., 476 U.S. 858, 864-65 (1986), we have established that strict products liability is incorporated into federal maritime law. Vickers v. Chiles Drilling Co., 822 F.2d 535, 538 (5th Cir. 1985). As such, Delaney must demonstrate that the product is unreasonably dangerous in normal use. Molett v. Penrod Drilling Co., 826 F.2d 1419, 1424 (5th Cir. 1987); see also Restatement (Second) of Torts § 402A comment h (a product is not defective if "safe for normal handling and consumption").

The Delaneys have failed to do so. With regard to the absence of a permanent ladder, Delaney himself admitted that about only half of the barges he had seen were equipped with permanent ladders. Permanent ladders, according to one witness, are routinely damaged and therefore are useless.² In fact, MEMCO operates 360 barges and none contains a permanent ladder. As for the failure to include a custom-fit, portable ladder, the Delaneys' own witness, A.J. Suda, testified that he had never seen such a ladder on a barge. Finally, the omission of ladder cleats does not render the barge unreasonably dangerous. Suda

²At the time of construction in 1972, HBC omitted a permanent ladder at the request of the barge's original owner, Findlay Towing Co. and Tuscalossa Barge Line, because such ladders were an inconvenience and were routinely destroyed. MEMCO purchased the barge from the original owners in 1987.

testified that the barge's mooring cleat would have been sufficient to secure the ladder. The district court's conclusion that no rational jury could find that the barge was defective was correct.

C. Causation

Because we find that the barge was not defective, we need not address in detail the district court's alternative holding. We would simply say that the district court's analysis of this issue is highly persuasive and its conclusion is appropriate.

III. CONCLUSION

The district court's thorough and well-reasoned opinion is AFFIRMED.