

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2026

Lyle W. Cayce
Clerk

No. 25-40619
Summary Calendar

PETER QUANSAH,

Plaintiff—Appellant,

versus

MSC MEDITERRANEAN SHIPPING COMPANY SA,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:23-CV-144

Before DAVIS, WILSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Plaintiff-Appellant Peter Quansah, a longshoreman, was injured while loading cargo onto a container ship. He sued the vessel owner, seeking recovery under § 905(b) of the Longshore and Harbor Workers' Compensation Act (LHWCA). The district court granted summary judgment for the vessel owner. We AFFIRM.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I.

Quansah was an employee of Ceres Gulf, Inc., a stevedoring company (Ceres). On September 17, 2022 at 7:00 p.m., Quansah boarded the M/V MSC Adonis, a container ship owned by Defendant-Appellee MSC Mediterranean Shipping Company SA (MSC). Quansah was working with a seven-member stevedoring crew. Other crew members were using a crane to load containers onto the deck. Quansah’s specific task was to use lashing rods provided by the shipowner to secure the loaded containers into place.

At about 2:00 a.m. the next morning, Quansah was working in an elevated walkway. He took a step back and tripped over a lashing rod that he alleges had been left in the walkway. He lost his balance and fell into a rope railing. The rope was allegedly “loose,” and failed to catch Quansah. He fell over the side of the walkway and landed on the deck below, injuring his wrist.

Quansah sued MSC in federal district court. The district court granted summary judgment for MSC, holding that Quansah failed to create a genuine issue of fact as to whether MSC breached any of the duties vessel owners owe longshoreman. Quansah timely appealed.

II.

The parties agree that the LHWCA, 33 U.S.C. § 905(b), applies to this case. Under that law, “the primary responsibility for the safety of the longshoremen rests upon the stevedore” rather than the vessel owner.¹ Vessel owners owe only “three narrow duties to longshoremen: (1) a turnover duty, (2) a duty to exercise reasonable care in the areas of the ship

¹ *Randolph v. Laeisz*, 896 F.2d 964, 970 (5th Cir. 1990); see *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156, 170 (1981).

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under the active control of the vessel, and (3) a duty to intervene.”² Quansah avers MSC breached all these duties. We examine each in turn. Ultimately, we do not find any of Quansah’s arguments persuasive.

A. The Turnover Duty

A vessel owner must “exercise ordinary care under the circumstances to turn over the ship and its equipment in such condition that an expert stevedore can carry on stevedoring operations with reasonable safety.”³ Specifically, the owner must “warn the stevedore of latent or hidden dangers which are known to the vessel owner or should have been known to it.”⁴

Quansah contends that MSC knew or should have known that the walkway’s rope railing was loose, such that it breached the turnover duty by failing to warn him of this latent defect. We do not agree. As a preliminary matter, Quansah presents scant evidence that the railing was defective in the first place. For example, he offers no witness accounts, photos, or evidence of a post-accident inspection. He offers only his deposition testimony that the rope felt “loose” as he fell.

Even assuming Quansah could prove the railing was defective, he offers no evidence as to MSC’s knowledge of the defect. He points to a statement from our case law that “[i]f the condition existed *from the outset*, the shipowner is charged with actual knowledge of the dangerous condition.”⁵ But Quansah offers no evidence regarding the timing of the

² *Kirksey v. Tonghai Mar.*, 535 F.3d 388, 391 (5th Cir. 2008).

³ *Id.* at 392.

⁴ *Id.*

⁵ *Hernandez v. M/V Rajaan*, 841 F.2d 582, 586 (5th Cir.), *opinion corrected on denial of reh’g*, 848 F.2d 498 (5th Cir. 1988) (citing *Harris v. Flota Mercante Grancolombiana, S.A.*, 730 F.2d 296, 299 (5th Cir. 1984)) (emphasis added).

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purported defect. For its part, MSC points to testimony from the vessel's captain and chief officer that crew members always inspected the railings before turnovers. Quansah offers nothing to rebut this testimony or to show that the railing was in fact loose *before* MSC turned the vessel over to Ceres.⁶ Indeed, he concedes that "the record is simply absent as to precisely how the railing came to be defective." This lack of evidence on the timing or origin of the purported defect is fatal to the knowledge element of the turnover duty.⁷

B. The Active Control Duty

A vessel may be liable if it "fails to exercise due care to avoid exposing longshoremen to harm from hazards they may encounter in areas, or from equipment, under the active control of the vessel."⁸ Quansah contends that the lashing rod over which he tripped was improperly left in the walkway and that this hazard was under MSC's active control.

We are not persuaded. Notably, MSC completed a pre-turnover inspection checklist on September 15, 2022, confirming that at the time of turnover, lashing material was "neatly and securely stowed and not scattered in cross decks/walkways." There is nothing in the record to suggest that the stevedores were not responsible for moving the rods during the ensuing two-and-a-half-day period between completion of this checklist and Quansah's accident. Indeed, Quansah concedes that (1) he does not know who left the rod in the walkway, and it may have been a fellow stevedore rather than a vessel crew member; (2) he saw the rod laying in the walkway earlier in his

⁶ The record does not clearly reflect when the vessel was turned over to Ceres for stevedoring services. A pre-turnover inspection checklist was completed on September 15, 2022, several days before Quansah's September 18, 2022, accident. But neither party has directed this court to evidence as to when stevedoring operations began.

⁷ See *Kirksey*, 535 F.3d at 392.

⁸ *Scindia*, 451 U.S. at 167.

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shift, before he tripped; (3) he could have moved the rod out of the way, but did not; (4) the stevedores, not the vessel's crew, were the ones working in the area and using the lashing material to secure the cargo; and (5) no one from the vessel was telling him what to do with the rods. Nevertheless, he avers MSC retained "active control" of the lashing operation. He relies on three pieces of evidence, none of which is persuasive.

First, he points to evidence of monitoring. Specifically, the captain testified that the crew made "frequent rounds" to check the stevedores' progress, and MSC's Vessel Procedure Manual instructs that the crew should "supervise" the stevedores. But "the fact that any member of the vessel crew watched over the cargo operations does not establish active control. A vessel owner does not trigger a duty by having its employees check on the progress of the contractor's work."⁹

Second, he points to a statement from his own affidavit that on the night of the accident, "a member of the ship's crew approached another stevedore" and "instructed him to use cross rigging on the container instead of the regular (straight) rigging we had been performing." He contends that this instruction constitutes "operational control over the precise details" of the stevedores' work sufficient to establish active control. We do not agree. "Involvement in the cargo plan does not constitute active control."¹⁰ Rather, the vessel's duty extends to mitigating hazards "in *areas*, or from *equipment*,

⁹ *Dow v. Oldendorff Carriers GMBH & Co.*, 387 F. App'x 504, 507 (5th Cir. 2010) (per curiam) (citing *Fontenot v. United States*, 89 F.3d 205, 208 (5th Cir. 1996)).

¹⁰ *Sobrino-Barrera v. Anderson Shipping Co.*, 495 F. App'x 430, 434 (5th Cir. 2012) (per curiam) (finding no active control where the vessel instructed that particular cargo be placed in a certain part of the vessel); *see also Pledger v. Phil Guilbeau Offshore, Inc.*, 88 F. App'x 690, 692 (5th Cir. 2004) (per curiam) ("[D]etermining placement of the cargo does not constitute active control.").

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under the active control of the vessel.¹¹ As to the work area, the deck and walkway where Quansah was lashing had been turned over to the stevedores.”¹² And as to the equipment, it is uncontested that only Quansah and his crew, and no vessel members, were interacting with the lashing rods and turn buckles. Overall, the crew member’s instruction to complete the lashing in a particular pattern essentially constitutes oversight of the cargo plan rather than true operational control over the stevedores’ activity.

Third, Quansah contends that MSC voluntarily retained active control of the operation. He points to portions of MSC’s Vessel Procedure Manual, which state that crew members should “[e]nsure no (fallen) lashing material or any other object is left in the cargo hold” and “ensure lashing platforms and cross deck walkways are [in] safe working condition.” But Quansah has not identified any cases where a vessel’s own documents sufficed to establish liability absent active control of the work area or equipment, and persuasive case law indicates otherwise.¹³ Moreover, the portions of the Vessel Procedure Manual which Quansah cites are listed

¹¹ *Scindia*, 451 U.S. at 167 (emphasis added).

¹² See *Fontenot v. McCall’s Boat Rentals, Inc.*, 227 F. App’x 397, 403 (5th Cir. 2007) (“To determine whether an area is in the active control of the vessel owner, this court generally considers whether the area in question is within the contractor’s work area and whether the work area has been ‘turned over’ to the contractor.”).

¹³ See *id.* at 404 (“Although the [Job Safety Analysis] specified that a clear walkway should be maintained and the captain testified that it was his responsibility, [Plaintiff] has not established that the JSA . . . gave the captain active or operational control over the deck during the operation, or otherwise created an independent duty running from the vessel owners to the subcontractors working on the deck.”).

Quansah cites our decision in *Theriot v. Bay Drilling Corp.*, 783 F.2d 527, 535 (5th Cir. 1986), for the proposition that a vessel may voluntarily assume a duty to maintain a work area. But *Theriot* is not on point: we merely held that the vessel had a duty to keep the vessel’s deck clean where it asserted active control over the work area under the test set out above. No manual, contract, or other voluntary assumption was at issue in *Theriot*.

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under the heading “*Preparation* for Cargo Operation.” Accordingly, by its own terms, the document establishes only a duty to turn the vessel over with clear walkways, not a duty to maintain the walkways throughout the cargo operation. In sum, we find that Quansah has failed to create a genuine issue of fact as to active control.

C. The Duty to Intervene

A vessel may be liable “if the vessel owner fails to intervene in the stevedore’s operations when he has actual knowledge both of the hazard and that the stevedore, in the exercise of ‘obviously improvident’ judgment, means to work on in the face of it and therefore cannot be relied on to remedy it.”¹⁴ This duty is “is narrow and requires ‘something more’ than mere shipowner knowledge of a dangerous condition.”¹⁵

Quansah points to three pieces of evidence to carry his burden on these stringent elements: (1) his statement that there was lashing material “all everywhere in the walkway” at some unspecified time in his shift, (2) testimony from the vessel’s captain that the crew monitored the stevedores, perhaps making checks between shifts, and (3) the Vessel Procedure Manual’s recognition that lashing rods can be tripping hazards. Taken together, this evidence falls short of demonstrating actual knowledge of a dangerous condition pre-requisite to invoking this narrow duty.¹⁶

¹⁴ *Pimental v. LTD Canadian Pac. Bul*, 965 F.2d 13, 15 (5th Cir. 1992).

¹⁵ *Singleton v. Guangzhou Ocean Shipping Co.*, 79 F.3d 26, 28 (5th Cir. 1996).

¹⁶ *See Pimental*, 965 F.2d at 17 (holding that even if there was enough evidence to find the vessel had actual knowledge of the hazard, “there was not sufficient evidence to support the conclusion that the vessel had ‘actual knowledge that it could not rely on the stevedore to protect its employees and that if unremedied the condition posed a substantial risk of danger.’” (quoting *Randolph*, 896 F.2d at 971)).

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III.

Quansah has not met his burden to establish that MSC breached any of its narrow duties under these facts. **AFFIRMED.**
