

In re Cox

United States District Court for the Eastern District of Texas, Sherman Division

March 20, 2024, Decided; March 20, 2024, Filed

CIVIL NO. 4:21-CV-172-SDJ

Reporter

2024 U.S. Dist. LEXIS 49257 *; 2024 AMC 112; ___ F.Supp.3d ___

IN RE THE COMPLAINT AND PETITION OF BRIAN AND SUMMER COX AS OWNERS OF A 2001 SEA RAY PLEASURE VESSEL BEARING ID No. SERP5231B101, HER ENGINE, GEAR, TACKLE, APPURTENANCES, ETC., FOR EXONERATION FROM OR LIMITATION OF LIABILITY

Core Terms

admiralty jurisdiction, boat, vessel, damages, **maritime**, **maritime law**, admiralty, navigable waters, total loss, summary judgment, dockminium, land-based, cross-claim, docked, loss-of-use, nonmovant, injuries, maritime jurisdiction, loss of use, Extension Act, maritime-activity, counterclaim, genuine

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Judges: SEAN D. JORDAN, UNITED
STATES DISTRICT JUDGE.

Opinion by: SEAN D. JORDAN

Opinion

In Admiralty Pursuant to Rule 9(h)

MEMORANDUM OPINION AND ORDER

This maritime limitation action arises from a fire that occurred at the Mill Creek Resort & Marina **located** on **Lake** Texoma. The fire began on a motor yacht vessel owned by Petitioners Brian Cox and Summer Cox and spread quickly from the Coxes' boat, damaging property belonging to BCB Marina Group d/b/a [*3] Mill Creek Resort & Marina ("Mill Creek Marina") along with the property of several other parties. As relevant here, Counterclaimants/Cross-Claimants Jay Stamper and Sandra Peak had a boat at Mill Creek Marina that was

damaged **in** the fire and later declared a total loss. **In** addition, Stamper and Peak's "dockominium"¹ was also damaged by the fire, together with other property.²

The Coxes filed the instant suit for exoneration or limitation of liability, civil and maritime, under the [Limitation of Liability Act \("Limitation Act"\), 46 U.S.C. § 30501 et seq.](#), and under *Rule F of the Supplemental Rules* for Certain Admiralty and Maritime Claims. Stamper and Peak filed a counterclaim against the Coxes, as well as a cross-claim against Mill Creek Marina. Stamper and Peak's cross-claim against Mill Creek Marina seeks damages for, among other things, the loss of their real and personal property at the marina and loss of use and/or enjoyment of their property.

Before the Court is Mill Creek Marina's Motion for Partial Summary Judgment. (Dkt. #114). **In** the motion, Mill Creek Marina requests that Stamper and Peak's claim for loss-of-use damages for any property which was a total loss should be dismissed with prejudice under controlling **maritime law**. Stamper and Peak oppose the motion, challenging the [*4] application of admiralty jurisdiction and **maritime law**. Because the Court concludes that it has admiralty jurisdiction, and **maritime law** precludes the recovery of loss-of-use damages for property deemed a total loss, the motion will be granted.

¹ A "dockominium" is a residence built on the docks at the marina.

² Stamper and Peak have summarized their damages to include the loss of their yacht and its contents, as well as damage to their dockominium and its contents, together with additional items of property damaged or destroyed by the fire. See (Dkt. #114-1).

I. BACKGROUND

Mill Creek Marina is a full-service marina located on Lake Texoma near Pottsboro, Texas. In addition to certain land-based facilities, such as a convenience store, boat launch, boat dry storage, and cabins for rent, Mill Creek has twelve docks extending from shore over the water, with covered boat slips that may be leased, and living quarters on the second story over the dock—the so-called "dockominiums." The Coxes, as well as Stamper and Peak, leased slips at Mill Creek and kept vessels there. Both also owned dockominiums. It is undisputed that the Cox Vessel³ was the origin of a fire that ultimately consumed a number of boats and the structure of one of the docks at Mill Creek, including Stamper and Peak's boat and dockominium.

After the Coxes filed this Limitation Action, Stamper and Peak asserted both a counterclaim against the Coxes and a cross-claim against Mill Creek Marina. As to their counterclaim, Stamper and Peak have alleged, [*5] among other things, that the Cox Vessel was not maintained in a seaworthy condition and that the Coxes failed to properly maintain and inspect the Vessel, particularly in regard to its electrical system and other electrical gear. Stamper and Peak also maintain that the Cox Vessel lacked adequate alarms and warning systems. As a result of these and other alleged acts and omissions, Stamper and Peak assert that the Coxes are not entitled to exoneration from or limitation of

liability under the Limitation Act. As to their crossclaim, Stamper and Peak contend that a contributing cause of the fire that began on the Cox Vessel was faulty or defective electrical service provided by Mill Creek Marina. Based on these allegations, Stamper and Peak seek damages from Mill Creek Marina for loss of their real and personal property at the marina, as well as loss of use of their property.⁴

In its motion for partial summary judgment, Mill Creek Marina requests that the Court dismiss Stamper and Peak's claim for loss of use damages as to any property deemed a total loss because maritime law does not allow the award of such damages. Stamper and Peak contend that admiralty jurisdiction is absent and maritime [*6] law inapplicable because the fire on the Coxes boat was, at least in part, caused by negligent acts or omissions of Mill Creek Marina that occurred on land. According to Stamper and Peak, Texas law, which they contend broadly permits loss of use damages, should apply to their cross-claim against Mill Creek Marina.

II. LEGAL STANDARD

"Summary judgment is appropriate only when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" [Shepherd v. City of Shreveport, 920 F.3d 278, 282-83 \(5th Cir. 2019\)](#) (quoting [FED. R. CIV. P. 56\(a\)](#)). If the moving party presents a motion for

³The Court will refer to the vessel at issue—a 2001 Sea Ray Sundancer 460 bearing the identification number SERP5231B101, and her engine, gear, tackle, and appurtenances—as the "Vessel" or "Cox Vessel."

⁴The Court notes that, although a number of claimants initially joined this action, all claims have now been settled except for Stamper and Peak's claims against the Coxes and Mill Creek Marina.

summary judgment that is properly supported by evidence, "the burden shifts to the nonmoving party to show with 'significant probative evidence' that there exists a genuine issue of material fact." [Hamilton v. Segue Software Inc., 232 F.3d 473, 477 \(5th Cir. 2000\)](#) (quoting [Conkling v. Turner, 18 F.3d 1285, 1295 \(5th Cir. 1994\)](#)).

Because [Federal Rule of Civil Procedure 56](#) requires that there be no "genuine issue of *material fact*" to succeed on a motion for summary judgment, "the mere existence of *some* alleged factual dispute" is insufficient to defeat a motion for summary judgment. [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 \(1986\)](#) (first emphasis omitted). A fact is "material" when, under the relevant substantive law, its resolution might govern the outcome of the suit. [Id. at 248](#). "An issue is 'genuine' if the evidence is sufficient for [*7] a reasonable jury to return a verdict for the nonmoving party." [Hamilton, 232 F.3d at 476](#) (citing [Anderson, 477 U.S. at 248](#)).

Courts consider the evidence *in* the light most favorable to the nonmovant, but the nonmovant may not rely on mere allegations *in* the pleading; rather, the nonmovant must respond to the motion for summary judgment by providing particular facts showing that there is a genuine issue for trial. [Int'l Ass'n of Machinists & Aerospace Workers v. Compania Mexicana de Aviacion, S.A. de C.V., 199 F.3d 796, 798 \(5th Cir. 2000\)](#). If, when considering the entire record, no rational jury could find for the nonmoving party, the movant is entitled to summary judgment. [Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475](#)

[U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 \(1986\)](#) (citation omitted).

III. DISCUSSION

A. The Court Has Admiralty Jurisdiction

Although Mill Creek Marina's partial-summary-judgment motion rests on the application of ***maritime-law*** doctrine concerning the availability of loss-of-use damages, the real fight here is whether admiralty jurisdiction and ***maritime law*** are properly invoked *in* the first place. Stamper and Peak maintain that admiralty jurisdiction is absent because a contributing cause of the fire that destroyed their property was Mill Creek Marina's land-based conduct and because they suffered landbased injuries, particularly damage to their dockominium.

Because Stamper and Peak's jurisdictional arguments are refuted by both statutory [*8] law and Supreme Court precedent, they necessarily fail. The Court concludes that admiralty jurisdiction has properly been invoked and ***maritime law applies***.

1.

The Court's admiralty jurisdiction initially derives from the Constitution: "The judicial Power shall extend . . . to all Cases of admiralty and maritime jurisdiction." [U.S. Const. art. III, § 2](#). The modern statutory grant of admiralty jurisdiction is set forth *in* [28 U.S.C. Section 1333\(1\)](#), which provides federal district courts "original jurisdiction . . . of . . . [a]ny civil case of admiralty or

maritime jurisdiction"

The traditional test for admiralty tort jurisdiction was the locality test, which asked only whether the tort occurred on navigable waters. "If it did, admiralty jurisdiction followed; if it did not, admiralty jurisdiction did not exist." [*Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531-32, 115 S.Ct. 1043, 130 L.Ed.2d 1024 \(1995\)](#). This test was complicated by the rule that the injury had to be "wholly" sustained on navigable waters for the tort to be within admiralty. [*Id. at 532*](#) (citation omitted); see also *id.* ("Thus, admiralty courts lacked jurisdiction over, say, a claim following a ship's collision with a pier insofar as it injured the pier, for admiralty law treated the pier as an extension of the land.").

The rule changed *in* 1948 when Congress enacted [*9] the Extension of Admiralty Jurisdiction Act ("Extension Act"), which expanded maritime jurisdiction to injuries occurring on land or sea caused by a vessel on navigable water. See [*46 U.S.C. § 30101*](#). "The purpose of the Act was to end concern over the sometimes confusing line between land and water, by investing admiralty with jurisdiction over 'all cases' where the injury was caused by a ship or other vessel on navigable water, even if such injury occurred on land." [*Grubart*, 513 U.S. at 532](#).

Following this congressional modification, the Supreme Court issued a series of decisions clarifying the parameters of admiralty tort jurisdiction, culminating *in* [*Grubart, Inc. v. Great Lakes Dredge &*](#)

[*Dock Co.*](#)⁵ As explained *in* [*Grubart*](#), under the modern test federal admiralty jurisdiction under [*28 U.S.C. § 1333\(1\)*](#) exists over a tort claim when conditions both of location and of connection with maritime activity are satisfied. [*513 U.S. at 534*](#). "A court **applying** the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water." *Id.* The connection test is answered *in two* parts: the court first "assess[es] the **general** features of the type of incident involved," to determine whether the [*10] incident has "a potentially disruptive impact on maritime commerce;" and the court must then "determine whether the **general** character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." *Id.* (internal quotation marks and citations omitted).

The test set forth *in* [*Grubart*](#) was derived directly from the Court's prior opinion *in* [*Sisson v. Ruby*, 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 \(1990\)](#). Indeed, throughout [*Grubart*](#) the Court references

⁵The trilogy of cases discussed *in* [*Grubart*](#) began with [*Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 \(1972\)](#). *In* [*Executive Jet*](#), the Court held that "claims arising from airplane accidents are not cognizable *in* admiralty," notwithstanding the location of the harm, unless "the wrong bear[s] a significant relationship to traditional maritime activity." [*409 U.S. at 268*](#). The second case, [*Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d 300 \(1982\)](#), involved tort claims arising out of the collision of *two* pleasure boats *in* a navigable river estuary. The Court upheld admiralty jurisdiction, finding a sufficient connection with traditional maritime activity because of "[t]he potential disruptive impact [upon maritime commerce] of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation . . ." [*457 U.S. at 675*](#). The third case, [*Sisson v. Ruby*, 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 \(1990\)](#), is discussed *infra* Part II.A.1-2.

the location and maritime-activity connection test for admiralty tort jurisdiction as the "Sisson" inquiry or test. See [Grubart, 513 U.S. at 538](#) (referencing the first maritime connection inquiry, i.e., whether the incident at issue had the potential to disrupt maritime commerce, as "[t]he first Sisson test"); see also [id. at 539](#) (referencing the second maritime-connection inquiry, i.e., "whether the **general** character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity," as "the second Sisson enquiry"). Likewise, *Grubart* tracks *Sisson* concerning the proper application of the location and maritime-activity connection test. And, of particular importance here, *Sisson* presented a factual scenario that is strikingly similar to [*11] the circumstances giving rise to the instant action. *In* that case, the Court held that a federal admiralty court had jurisdiction over tort claims arising when a fire, caused by a defective washer/dryer aboard a pleasure boat docked at a marina, burned the boat, other boats docked nearby, and the marina itself. [Sisson, 497 U.S. at 367](#).

2.

[Sisson](#) is directly applicable to this case and dispositive of the question of admiralty jurisdiction. Similar to *Sisson*, this case presents a maritime tort *in* which a fire began on board the Coxes' pleasure vessel and spread to other boats and a dock at Mill Creek Marina on **Lake** Texoma, destroying boats and damaging other property, including Stamper and Peak's boat and dockominium. And, like *Sisson*, the location and maritime-activity

connection tests for admiralty jurisdiction are satisfied.

To begin, the location element of the test from [Grubart](#) and *Sisson* is clearly met. **Lake** Texoma has been recognized to constitute the navigable waters of the United **States**. See [Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S.Ct. 368, 99 L.Ed. 337 \(1955\)](#). Thus, the fire on the Cox Vessel indisputably occurred on navigable waters.

The maritime-activity connection test is also met. As to the first part of the connection inquiry, which asks whether the **general** features [*12] of the type of incident involved could have a disruptive impact on maritime commerce, *Sisson* has answered the question *in* this exact circumstance. Specifically, *Sisson* holds that the burning of docked boats at a marina on navigable waters is an incident of a sort "likely to disrupt [maritime] commercial activity." [497 U.S. at 363](#); see also [Grubart, 513 U.S. at 533-34](#) (same). *Sisson* also answers the second connection inquiry, which asks whether the **general** character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. *Sisson* confirmed that, "[c]learly, the storage and maintenance of a vessel at a marina on navigable waters is substantially related to traditional maritime activity." [497 U.S. at 367](#) (internal quotation marks omitted); see also [Grubart, 513 U.S. at 534](#) (same). Because the location and maritime-activity connection tests are satisfied, this Court has admiralty jurisdiction.

3.

Resisting the existence of admiralty jurisdiction, Stamper and Peak make **two** arguments. First, they contend that a "contributing cause" of the fire on the Coxes' boat was Mill Creek Marina's allegedly defective and faulty electrical service, which was provided largely by land-based equipment. Thus, according to Stamper and [*13] Peak, their allegations of fault against Mill Creek Marina are based, at least **in** part, on wrongful conduct that occurred on land, not over water. See (Dkt. #115). Second, Stamper and Peak **state** that their dockominium, which was consumed **in** the fire, is not a "vessel" under **maritime law** and therefore Stamper and Peak's damages associated with the dockominium should not be subject to maritime jurisdiction. See (Dkt. #115).

Stamper and Peak's arguments against admiralty jurisdiction are unavailing. Their first argument, which suggests that admiralty jurisdiction is absent because of Mill Creek Marina's status as a potential additional tortfeasor whose activities occurred on land, is foreclosed by *Grubart*. Stamper and Peak have asserted maritime tort claims against the Coxes, contending that the fire which began on their boat was the result of the Coxes' alleged failure to properly maintain and inspect their boat and their alleged failure to have adequate alarms and warning systems. Stamper and Peak's cross-claims asserted against Mill Creek Marina as a potential *additional* tortfeasor do not negate admiralty jurisdiction. The Supreme Court rejected exactly this type of argument **in** *Grubart* [*14], explaining that "[t]he substantial relationship test is satisfied

when at least one alleged tortfeasor was engaging **in** activity substantially related to traditional maritime activity and such activity is claimed to have been a proximate cause of the accident." [513 U.S. at 541](#). Here, even assuming *arguendo* that Mill Creek Marina's alleged conduct occurred on land, the conduct of the Coxes, the boat owners, "suppl[ies] the necessary substantial relationship to traditional maritime activity." *Id.*

Stamper and Peak's second argument against admiralty jurisdiction is equally flawed. **In** Stamper and Peak's view, their alleged land-based injury to their dockominium should not be subject to admiralty jurisdiction.⁶ As the Supreme Court recognized **in** *Grubart*, this argument asks the Court to effectively change the current test for admiralty jurisdiction **in** cases "involving land-based parties and injuries." [Id. at 543](#). But as is explained **in** *Grubart*, "Congress has already made the judgment, **in** the Extension Act, that a land-based victim may properly be subject to admiralty jurisdiction." [Id. at 545](#). As *Grubart* recognized, the language of the Extension Act is unequivocal, providing that admiralty and maritime jurisdiction shall "extend[] [*15] to and include[] cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land." [46 U.S.C. § 30101](#). And it is undisputed that the fire that caused all of Stamper and Peak's alleged injuries began on the Coxes' boat,

⁶ Stamper and Peak maintain that their dockominium is not a "vessel" under **maritime law**. The Court need not decide this issue because, even assuming the dockominium is not a vessel, the Court has admiralty jurisdiction.

a vessel on navigable waters. Under the circumstances, the law is clear that admiralty jurisdiction is not negated because some of Stamper and Peak's alleged damages may involve land-based injuries.

B. Maritime Law Precludes Loss-of-Use Damages for Property Deemed a Total Loss.

With admiralty jurisdiction comes the application of substantive admiralty law. See [Executive Jet Aviation, 409 U.S. at 255](#); [East River S. S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858, 864, 106 S.Ct. 2295, 90 L.Ed.2d 865 \(1986\)](#). "Absent a relevant statute, the **general maritime law**, as developed by the judiciary, **applies**." [East River S. S. Corp., 476 U.S. at 864](#). The **general maritime law** has been aptly described by the Supreme Court as "an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." [Id. at 864-65](#) (citing [Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630, 79 S.Ct. 406, 409, 3 L.Ed.2d 550 \(1959\)](#); [Romero v. International Terminal Operating Co., 358 U.S. 354, 373-375, 79 S.Ct. 468, 480-481, 3 L.Ed.2d 368 \(1959\)](#)).

Mill Creek Marina asks the Court to **apply** the principle of **maritime law** that loss-of-use damages may not be awarded for property that is a total loss. As the Fifth Circuit has explained, "[i]t is fundamental that when a vessel is lost or damaged the owner is [*16] entitled to its money equivalent, and thereby to be put **in** as good a position pecuniarily as if his property had not been destroyed." *King*

Fisher Marine Service, Inc. v. NP Sunbonnet, 724 F.2d 1181, 1185 (5th Cir. 1984) (internal quotation marks and citation omitted). "The generally established rule is that **in** a case of total loss the owner is not compensated for the loss of use of the boat." *Id. at 1187* (citing *A & S Transp. Co. v. The Tug Fajardo, 688 F.2d 1, 2-3 (1st Cir. 1982)*). Rather, "[t]he owner is made whole by receiving the value of the boat at the time of its loss and interest compensates for the owner's time value of money." *Id.*

For their part, Stamper and Peak do not contest this principle of **maritime law**. Instead, their argument that Texas law **applies** turns solely on the contention that admiralty jurisdiction does not exist. The Court has rejected that argument. See *supra* Part III.A.⁷

The Court concludes that, under controlling **maritime law**, loss-of-use damages may not be awarded for Stamper and Peak's vessel, which has been deemed a total loss. Further, under the Extension Act this principle of **maritime law applies** to any of Stamper and Peak's property that is deemed a total loss because any such injuries were "caused by a vessel on navigable waters." [46 U.S.C. § 30101](#); see also [Grubart, 513 U.S. at 545](#) (explaining that under the Extension Act a victim of land-based injuries [*17] may properly be subject to admiralty jurisdiction).

IV. CONCLUSION

⁷The Court does not reach the issue of whether Stamper and Peak could recover for loss of use under Texas law since it does not **apply**.

For the foregoing reasons, Mill Creek Marina's Motion for Partial Summary Judgment, (Dkt. #114), is **GRANTED**. Any claim by Counterclaimants/Cross-Claimants Jay Stamper and Sandra Peak for loss-of-use damages as to property deemed a total loss is **DISMISSED with prejudice**.

So ORDERED and SIGNED this 20th day of March, 2024.

/s/ Sean D. Jordan

SEAN D. JORDAN

UNITED STATES DISTRICT JUDGE

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