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Grand Bahama Petroleum Co., Ltd. v. Canadian Transportation Agencies, Ltd.: Maritime Attachment - Relationship of New Due Process Requirements to Procedures

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III. PRIVATE INTERNATIONAL TRADE LAW

ADMIRALTY — MARITIME ATTACHMENT — PROCEDURES SET FORTH IN SUPPLEMENTAL ADMIRALTY RULE B(1) DO NOT COMPLY WITH MINIMUM STANDARDS OF DUE PROCESS AS CURRENTLY DEFINED IN THE UNITED STATES

Grand Bahama Petroleum Co., Ltd. v. Canadian Transportation Agencies, Ltd. 450 F. Supp. 447 (W.D. Wash. 1978).

Grand Bahama Petroleum Co., Ltd.,[1] a Bahamian corporation, maintains a fueling facility in Freeport, Grand Bahama Island. In early July, 1977,[2] the Soviet flag vessel M/V KUIBSHEVGES, allegedly under charter to Canadian Transportation Agencies, Ltd.,[3] called to take on bunkers. On July 6, Grand Bahama Petroleum supplied the vessel with 2,296 barrels of fuel and charged the defendants $40,363.48 (plus barge fees of $600). Canadian Transport failed to pay the amount due or any part thereof. On August 3, 1977, Grand Bahama Petroleum instituted an *in personam* action, in admiralty, against the defendant in U.S. District Court for the Western District of Washington. The sole connection between the forum and the cause of action was a bank account of $8,851.38 maintained in a Washington bank in the name of Pacific Seatrains Co., but allegedly the property of all the defendants. Grand Bahama Petroleum attached the bank account pursuant to Supplemental Admiralty Rule B(1).[4] On November 28, 1977, the defendants filed a motion to dismiss on two grounds: first, that maritime attachment violated the principles of procedural due process set forth in *Sniadach v. Family Finance Corp. of Bay View*[5] and, second, that the court lacked jurisdiction under the standards set forth in *Shaffer v. Heitner*.[6] The court granted defendant's motion and held that the procedure prescribed in Rule B(1) is violative of due process.[7]

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1. Hereinafter referred to as Grand Bahama Petroleum.
2. All dates relating to the instant action are 1977.
3. Hereinafter referred to as Canadian Transport.
4. FED. R. CIV. P., Supplemental Rule B(1) for Certain Admiralty and Maritime Claims.
5. 395 U.S. 337 (1969).
6. 433 U.S. 186 (1977).
7. The action was not appealed.

SHAFFER V. HEITNER

In *Shaffer*, the plaintiff brought a stockholder's derivative suit in Delaware Chancery Court against twenty-eight present and former employees of Greyhound, none of whom was a resident of Delaware. The suit was based on unrelated acts allegedly committed in Oregon. The only connection between the defendants and the forum was stock ownership as evidenced by the corporate stock ledger at Greyhound's corporate headquarters in Delaware.

The *Shaffer* Court viewed the assertion of jurisdiction over a nonresident defendant, merely because his property happened to be present in the forum state, as nothing more than a fiction allowing the state to indirectly obtain personal jurisdiction where it otherwise could not:

> [T]he phrase, 'judicial jurisdiction over a thing,' is the customary elliptical way of referring to jurisdiction over the interests of persons in a thing (citation omitted). This recognition leads to the conclusion that in order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction must be sufficient to justify exercising jurisdiction over the interests of persons in a thing.[8]

The Court decided the "sufficient" basis should be the minimum contacts standard established in *International Shoe Co. v. State of Washington*.[9] Consequently, the *Shaffer* Court denied Delaware jurisdiction to the plaintiffs.

In *Grand Bahama*, the court acknowledged the similarity between the facts before it and those in *Shaffer*. In both cases a plaintiff sought to compel the personal appearance of a nonresident defendant to answer and defend a suit brought against him by seizing property found within the forum's jurisdiction. The only difference between the two existed in the fact that the *Grand Bahama* action was brought in admiralty.

The law of admiralty has evolved to deal with one specific activity: the carriage of goods and passengers by water. While its exact origins are unknown, it is believed to be one of the oldest legal systems in the world.[10]

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8. 433 U.S. at 207.

9. *Id.*, International Shoe Co. v. State of Washington, 326 U.S. 310 (1945) established the following test: "[I]n order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316.

10. Admiralty has traditionally been traced back to the Rhodian Sea Laws which are dated from 900 B.C. The basic elements of the maritime law system of general average are found in Justinian's Digest which, in turn, cites the Rhodian

The ability of a plaintiff to bring an action against the property of a defendant, whether it be an *in rem* action, or, an *in personam* action through attachment, is a keystone of admiralty jurisprudence. Persons engaged in maritime commerce traditionally lead a very transmigratory life. Forcing claimants to bring suit in the domicile of the defendant (and disallowing them from suing in any forum where the defendant might be found, or his property attached) could result in great delay, inconvenience, and, in many cases, a denial of justice.[11] Admiralty, with its link to a single industry, its separate history, and its long continued and internationally recognized traditions, concepts, and legal practices, distinctively stands apart from shoreside law.[12]

In the United States, admiralty has always been recognized as an autonomous body of law. Constitutional, legislative, and judicial provisions have been made to allow its unique practices to continue.[13] In *Manro v. Alemida*,[14] the Supreme Court dealt with the question of whether maritime attachment was a part of American admiralty jurisprudence. In that case, the process of attachment was issued by the clerk of the court rather than by court order. Instead of moving to quash it for irregularity of process, the respondent appeared to the libel and filed a demurrer. The demurrer was granted by the district court and the circuit court affirmed. The Supreme Court limited its inquiry to "whether the court below erred in refusing to the libellant the process of attachment on the case made out in his libel."[15] The Court found that maritime attachment was a part of American admiralty jurisprudence and, hence, was available to the libellant. It further held that the libel should not have been dismissed since it substantially satisfied the pleading and procedural requirements of the time.[16] Maritime attachment has remained

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Sea Laws as authority. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 3 (1957).

11. *In re* the Louisville Underwriters, 134 U.S. 488, 493 (1890); The Propeller Commerce, 66 U.S. (1 Black) 574, 580-81 (1862).

12. The concepts of limitation of liability, the maritime lien, the *in rem* proceeding and the principles of salvage have no counterpart in traditional common law.

13. U.S. CONST. art. III, § 2. *See also* 28 U.S.C. § 1333 (1976) (corresponds to the Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 76-77); The Romero, 358 U.S. 354, 368 (1959).

14. 23 U.S. (10 Wheat) 473 (1825).

15. *Id.* at 485.

16. *Id.* at 495-96. Interestingly enough, judicial participation was required for obtaining a writ of maritime attachment in 1844 under Admiralty Rule 2. *See* Md. Tuna Corp. v. M/S BENARES, 429 F.2d 307, 320 (2d Cir. 1970).

a part of American admiralty jurisprudence ever since.[17] Indeed, the Maritime Lien Act of 1971[18] tends to strengthen traditional admiralty remedies against property. On the basis of admiralty's autonomy and the longstanding existence of a specific type of maritime attachment, the *Grand Bahama* court concluded that the requirements set out in *Shaffer* did not apply to Rule B(1).[19]

SNIADACH V. FAMILY FINANCE CORP. OF BAY VIEW

The defendant also challenged the constitutionality of the procedure used under Rule B(1) on the grounds that it violated the safeguards required by *Sniadach v. Family Finance Corp.* and its progeny.[20] The plaintiff relied most heavily on *North Georgia Finishing, Inc. v. Di-Chem.*[21] As with *Grand Bahama*, that case involved a corporate plaintiff who garnished the bank account of a corporate defendant. The garnishment procedures used in the two cases were almost identical: the writ of garnishment was issuable on an affidavit of the plaintiff or his attorney and the affidavit need only contain conclusory allegations. In both cases, the writ was issuable by the court clerk without judicial participation, and there was no provision for an immediate post-seizure hearing. The only distinguishing characteristic between *Di-Chem* and *Grand Bahama* was that the latter was an action in admiralty. The court in *Grand Bahama* found this distinction unpersuasive and held that the procedures of Rule B(1) were violative of procedural due process. The opinion stated that the court could "find no indication that maritime defendants may be due less procedural protection against mistaken deprivation of property than non-maritime defendants."[22]

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17. A procedure for maritime attachment has been provided for in the admiralty rules since they were first promulgated in 1844. *See* 7A MOORE'S FEDERAL PRACTICE paras. 21(1), at 201 and .30 at 224 (2d. ed. 1978); FED. R. CIV. P., Supplemental Admiralty Rule B(1).

18. 46 U.S.C. § 973 (1976), *construed in* Lake Union Drydock Co. v. M/V POLAR VIKING, 446 F. Supp. 1286 (W.D. Wash. 1978).

19. 450 F. Supp. at 456.

20. Three previous cases have raised this argument: Techem Chemical Co., Ltd. v. M/T CHOYO MARU, 416 F. Supp. 960 (D. Md. 1976); Amstar Corp. v. M/V ALEXANDROS T, 431 F. Supp. 328 (D. Md. 1977); Central Soya Co., Inc. v. Cox Towing Corp., 417 F. Supp. 658 (N.D. Miss. 1976). In all of these cases the court held that the respondent had not, in fact, been denied due process under the district court rules and, therefore, never reached the constitutional question presented here.

21. 419 U.S. 601 (1975).

22. 450 F. Supp. at 459.

CONCLUSION

Allowing Rule B(1) maritime attachment to escape the minimum contacts standard of *Shaffer* could encourage forum shopping. A plaintiff who cannot establish the minimum contacts necessary to gain jurisdiction of a state court may be able to bring the action in federal court if he can establish admiralty jurisdiction. On the other hand, if *Shaffer* were to apply to maritime attachment, many claimants would effectively be foreclosed from bringing an action and thereby denied an opportunity to obtain relief. On balance it seems that the historical basis, the unique subject matter, and the specialized remedies of admiralty provide sufficient reasons to allow actions in admiralty to escape the limitations of *Shaffer*.[23]

There seems, however, no reason not to apply the procedural safeguards created by the *Sniadach* line of cases. The precise status of such safeguards is uncertain.[24] Admiralty decisions may be able to deviate somewhat from the strictest requirements created by the *Sniadach* line of cases without acting contrary to the Supreme Court's intention. However, the shortcomings of Rule B(1) specifically, and of admiralty law generally with respect to procedural due process have been seriously criticized.[25] It appears that, as this case indicates, at least some

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23. *Grand Bahama* specifically applies only to *in personam* proceedings. 450 F. Supp. at 460 n. 85. *See also*, Bohman, *Applicability of Shaffer to Admiralty In Rem Jurisdiction*, 53 TUL. L. REV. 135 (1978), in which Ms. Bohman suggests that the "minimum contacts" required by *Shaffer* are *not* those traditionally used — namely contacts with the state in which the federal district court is located — but contacts with the United States as an entity because admiralty disputes fall primarily within the purview of federal jurisdiction.

24. As evidence of the Supreme Court's current reevaluation of this area, *see* Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974) and North Georgia Finishing, Inc. v. Di-Chem, 419 U.S. 601 (1975).

25. Note, *Maritime Attachment Under Rule B: A Jurisdictional Disguise for an Unconstitutional Security Attachment*, 43 BROOKLYN L. REV. 403 (1977).

improvement is necessary. In fact specific changes have already been proposed within the maritime industry,[26] and should now be actively pursued.

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26. This problem is avoided in the draft proposals of the AMERICAN MARITIME ASSOCIATION, PROPOSED AMENDMENT TO SUPPLEMENTAL RULES, REPORT OF THE COMMITTEE ON PRACTICE AND PROCEDURE 6783-84 (M.L.A. Doc. No. 610, Nov. 1, 1977) which reads as follows:

> Summary Release from arrest or attachment.
>
> Where property is arrested or attached, any person claiming an interest in the property arrested or attached may, upon a showing of any improper practice or a manifest want of equity on the part of the plaintiff, be entitled to an order requiring the plaintiff to show cause forthwith why the arrest or attachment should not be vacated or other relief granted consistent with these rules.

Cf. Local Admiralty Rule 13 of the Southern and Eastern District of New York, *reprinted in* 5 Benedict on Admiralty 644-45 (7th ed. A. Knauth & C. Knauth 1974) which states:

> Where property is arrested, any person claiming an interest in the property arrested, may, upon evidence showing any improper practice or a manifest want of equity on the part of the plaintiff be entitled to an order requiring the plaintiff to show cause instanter why the arrest or attachment should not be vacated.