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**DAVID LEE**

v.

**GREAT LAKES DREDGE & DOCK COMPANY**

United States District Court, Southern District of New York, November 15, 2007  
06 Civ. 14251

**PERSONAL INJURY — 13112. Vessels Covered — SEAMEN — 114. Miscellaneous  
Employments — VESSEL — 11. What Constitutes a Vessel.**

A Coastal Research Amphibious Buggy (“CRAB”) is a vessel for finding its driver to be a Jones Act seaman. A CRAB is a three-wheeled amphibious vehicle with an operator’s platform perched on three tall legs with an inflatable rubber tire on the bottom of each leg. A diesel engine on the platform drives a hydraulic pump that drives a hydraulic motor on each tire. The rubber tires move the CRAB on the sea bottom or on land. It does not float, but those who run it are exposed to the same perils as those for whom Congress has provided protection in the Jones Act. The plaintiff here had to swim to shore when the CRAB became stuck on the ocean floor 100 feet off the beach. Motion for summary judgment to find the plaintiff not to be a seaman is denied.

Michael H. Zhu (Zhu & Tsang, P. C.) and Rudolph V. DeGeorge, II (Barish Rosenthal) *for Lee*

John R. Geraghty (Marshall, Dennehey, Warner, Coleman & Goggin) *fo Great Lakes Dredge & Dock*

SHIRA A. SCHEINDLIN, D.J.:

## I. INTRODUCTION

David Lee brings suit under §688 of the Jones Act<sup>1</sup> and under general maritime law to recover damages for personal injuries he suffered while

1. 46 U.S.C. app. §688 (2003). On October 6, 2006, the Jones Act was recodified as 46 U.S.C. §30104.

working on a Coastal Research Amphibious Buggy (“CRAB”). Defendant Great Lakes Dredge & Dock Company (“Great Lakes”) moves for summary judgment as to all claims. It contends that because the CRAB is not a vessel, Lee is not a seaman and cannot bring an action under the Jones Act or general maritime law.<sup>2</sup> For the reasons stated below, Great Lakes’ motion for summary judgment is denied.

## II. BACKGROUND

### A. Facts

In December of 2003, Great Lakes was engaged in a beach nourishment and restoration project at Fire Island, New York (the “Fire Island Project”).<sup>3</sup> The purpose of the project was to repair and reconstruct beach areas that had been eroded by storms, weather, and waves. In November, 2003, Great Lakes hired David Lee to work on the Fire Island Project.<sup>4</sup> His duties included operating and maintaining the CRAB.<sup>5</sup>

The CRAB is a three-wheeled, amphibious vehicle with an operator’s platform perched upon three tall legs.<sup>6</sup> An inflatable rubber tire is attached to the bottom of each leg. The CRAB is powered by a diesel engine that drives a hydraulic pump on the operator’s platform that in turn drives a hydraulic motor attached to each rubber tire.<sup>7</sup> The CRAB moves by the rotation of its rubber tires on the sea bottom or on land.<sup>8</sup>

On or about December 14, 2003, Lee was injured in the course of his duties as CRAB operator.<sup>9</sup> The Injury Report states that he was injured after the CRAB got stuck approximately one hundred feet offshore. Lee had to abandon the CRAB and jump into the rough waters, and he was pulled ashore while holding on to a retrieval line.<sup>10</sup> Following the accident,

2. See Defendant’s Memorandum of Law in Support of Motion for Summary Judgment at 2.
3. See Defendant’s 56.1 Statement of Uncontested Material Facts (“Def. 56.1”) ¶2; Plaintiff’s Response to 56.1 Statement of Uncontested Material Facts (“P1.56.1”) ¶2.
4. See Def. 56.1 ¶3; P1.56.1 ¶3.
5. See *id.*
6. See Def. 56.1 ¶5.
7. See *id.* ¶6.
8. See *id.* ¶7. Plaintiff denies that the CRAB moves on land. However, as the name Coastal Research Amphibious Buggy suggests, it is capable of moving both on land and in water. In any event, this contested issue of fact is not material to the instant dispute.
9. See Def. 56.1 ¶3; Great Lakes Dredge & Dock Company First Notice of Employee Injury or Illness (“Injury Report”).
10. See Injury Report.

Lee received worker's compensation benefits from Great Lakes pursuant to the Longshore and Harbor Workers' Compensation Act.<sup>11</sup>

## B. Procedural History

On November 8, 2006, Lee commenced this action by filing a Complaint seeking damages for (1) negligence under §688 of the Jones Act and (2) maintenance, cure, and wages under general maritime law.<sup>12</sup> Great Lakes has asserted a counterclaim, stating that if Lee is entitled to sue under the Jones Act or general maritime law, Great Lakes is entitled to repayment of all benefits paid under the Longshore and Harbor Workers' Compensation Act.<sup>13</sup> Great Lakes also asserts a lien on any recovery by Plaintiff.<sup>14</sup> On August 15, 2007, Great Lakes moved for summary judgment on the ground that Lee had no substantial connection to a "vessel in navigation" and therefore is not a seaman.<sup>15</sup>

## III. APPLICABLE LAW

### A. Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."<sup>16</sup> An issue of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."<sup>17</sup> A fact is material when it "might affect the outcome of the suit under the governing law."<sup>18</sup> "It is the movant's burden to show that no genuine factual dispute exists."<sup>19</sup>

11. 33 U.S.C. §901 et seq.

12. See Complaint.

13. See Answer ¶17. Because it is not yet determined whether Lee has a Jones Act or general maritime claim, Great Lakes' request for repayment of benefits cannot be addressed at this time.

14. See *id.*

15. Def. Mem. at 8.

16. Fed. R. Civ. P. 56(c).

17. *Williams v. Utica Coll. of Syracuse Univ.*, 453 F.3d 112, 116 (2 Cir. 2006) (quoting *Stuart v. American Cyanamid Co.*, 158 F.3d 622, 626 (2 Cir. 1998)).

18. *Bouboulis v. Transport Workers Union*, 442 F.3d 55, 59 (2 Cir. 2006) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986)).

19. *Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2 Cir. 2004) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)).

In turn, to defeat a motion for summary judgment, the non-moving party must raise a genuine issue of material fact. To do so, it must do more than show that there is “ ‘some metaphysical doubt as to the material facts,’ ”<sup>20</sup> and it “ ‘may not rely on conclusory allegations or unsubstantiated speculation.’ ”<sup>21</sup> However, “ ‘all that is required [from a non-moving party] is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at trial.’ ”<sup>22</sup>

In determining whether a genuine issue of material fact exists, the court must construe the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in that party’s favor.<sup>23</sup> However, “[i]t is a settled rule that [c]redibility assessments, choices between conflicting versions of the events, and the weighing of evidence are matters for the jury, not for the court on a motion for summary judgment.”<sup>24</sup> Summary judgment is therefore inappropriate “ ‘if there is any evidence in the record that could reasonably support a jury’s verdict for the non-moving party.’ ”<sup>25</sup>

## B. The Jones Act

“The Jones Act provides a cause of action in negligence for ‘any seaman’ injured ‘in the course of his employment.’ ”<sup>26</sup> The purpose of the Act is “ ‘to protect sea-based maritime workers, who owe their allegiance to a vessel, and not to land-based employees, who do not.’ ”<sup>27</sup> To qualify for seaman status, a person must have an “ ‘employment-related connection to a vessel in navigation.’ ”<sup>28</sup> The test for satisfying this requirement is twofold:

20. *McClellan v. Smith*, 439 F.3d 137, 144 (2 Cir. 2006) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

21. *Jeffreys v. City of New York*, 426 F.3d 549, 554 (2 Cir. 2005) (quoting *Fujitsu Ltd. v. Federal Express Corp.*, 247 F.3d 423, 428 (2 Cir. 2002)).

22. *McClellan*, 439 F.3d at 144 (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)).

23. *See Allstate Ins. Co. v. Hamilton Beach/Proctor Silex, Inc.*, 473 F.3d 450, 456 (2 Cir. 2007) (citing *Stern v. Trustees of Columbia Univ.*, 131 F.3d 305, 312 (2 Cir. 1997)).

24. *McClellan*, 439 F.3d at 144 (quoting *Fischl v. Armitage*, 128 F.3d 50, 55 (2 Cir. 1997)). *Accord Anderson*, 477 U.S. at 249.

25. *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 286 (2 Cir. 2002) (citing *Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 398 (2 Cir. 2000)).

26. *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 1995 AMC 1840, 1844 (1995) (quoting 46 U.S.C. app. §688(a)).

27. 515 U.S. at 376, 1995 AMC at 1863.

28. *Wilander*, 498 U.S. at 355, 1991 AMC at 926.

“[1] [t]he worker’s duties must contribute to the function of the vessel or to the accomplishment of its mission, and [2] the worker must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature.”<sup>29</sup>

The Jones Act does not define the term “vessel.” However, §3 of title 1 of the United States Code (“§3”) defines the term for the purpose of the Jones Act.<sup>30</sup> Section 3 states: “The word ‘vessel’ includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”<sup>31</sup> In *Stewart v. Dutra Construction Company*, the Supreme Court clarified that under §3, “a ‘vessel’ is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment.”<sup>32</sup> The Supreme Court stated that “[t]he question remains in all cases whether the watercraft’s use ‘as a means of transportation on water’ is a practical possibility or merely a theoretical one.”<sup>33</sup> The Court noted that “structures may lose their character as vessels if they have been withdrawn from the water for extended periods of time.”<sup>34</sup> Thus, watercraft that have “been permanently moored or otherwise rendered practically incapable of transportation or movement” are not vessels.<sup>35</sup> However, a watercraft does not have to be in motion to satisfy the “in navigation” requirement.<sup>36</sup> “Instead, the ‘in navigation’ requirement is an element of the vessel status of a watercraft.” The structure needs to be “practically capable of maritime transportation.”<sup>37</sup>

The Supreme Court has explained the reason for requiring a substantial connection to vessel in navigation:

The fundamental purpose . . . is to give full effect to the remedial scheme created by Congress and to separate the sea-based maritime employees who are entitled to Jones Act protection from those land-

29. *Chandris*, 515 U.S. at 376, 1995 AMC at 1862.

30. *See Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 491, 2005 AMC 609, 614 (2005).

31. 1 U.S.C. §3.

32. *Stewart*, 543 U.S. at 497, 2005 AMC at 619 (holding that a dredge is a vessel).

33. 543 U.S. at 496, 2005 AMC at 619.

34. *Id.* (citations omitted). *Accord Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 1926 AMC 684 (1926) (wharfboat secured to the shore by cables, without machinery or power for propulsion, and connected to the city’s water, electricity, and telephone systems, was not a vessel).

35. *Stewart*, 543 U.S. at 494, 2005 AMC at 617.

36. 543 U.S. at 495-96, 2005 AMC at 619.

37. 543 U.S. at 497, 2005 AMC at 620.

based workers who have only a transitory or sporadic connection to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea.<sup>38</sup>

#### IV. DISCUSSION

Lee contends that not only was the CRAB capable of being used to transport equipment and people over water, but, in fact, it did do so. “In addition to its use for water surveys, the CRAB transported . . . 3-4 people on water, either for doing actual survey work or moving people to a crew boat. In addition, the CRAB was used on the water to transport equipment to a crew boat.”<sup>39</sup> Being capable of transporting people and equipment, the CRAB satisfies the “maritime transportation” requirement under *Stewart*.

Great Lakes, in turn, contends that passengers or equipment on the CRAB are not transported “on water,” but rather “above the water.”<sup>40</sup> Thus, Great Lakes attaches great importance to the term “on water” found in §3. It notes that the CRAB consists of a platform atop a twenty-five-foot steel tripod. Because the CRAB moves by rolling on the seabed, it can only transport people and equipment in waters that are less deep than the height of the CRAB itself.<sup>41</sup> Specifically, Great Lakes notes that the CRAB is designed not to float, but rather to remain constantly in contact with the seabed.<sup>42</sup>

Great Lakes gives a crabbed reading to the phrase “on water.” Its interpretation would exclude many common watercraft from qualifying as vessels. Hovercrafts—which transport people “above” the water on a cushion of air—and submarines—which transports people “under” water—would be excluded. A broader reading of the phrase “on water” is required. Such a reading is consistent with *Stewart*’s holding that under §3, “a ‘vessel’ is any watercraft practically capable of maritime transportation.”<sup>43</sup> In fact, courts have often used prepositions other than “on water” when explaining why a particular type of watercraft qualifies as a vessel under §3. For example, in *Stewart*, the Supreme Court explained that a dredge qualified as a vessel because it transported “equipment and workers

38. *Chandris*, 515 U.S. at 368, 1995 AMC at 1856.

39. Pl. Mem. at 7.

40. Reply Memorandum of Law in Support of Motion For Summary Judgment at 3.

41. *Id.* at 2-3.

42. *Id.* at 2.

43. 543 U.S. at 497, 2005 AMC at 620.

over water.’<sup>44</sup> Likewise, in *Uzdavines v. Weeks Marine, Inc.*, the Second Circuit explained that the dredge at issue in that case could “transport equipment and workers across navigable waters.”<sup>45</sup>

Moreover, this reading of §3 is consistent with the broad definition that courts, generally, have given to the term vessel. Noting “the seeming incongruity of grouping dredges alongside more traditional seafaring vessels under the maritime statutes,” the Supreme Court in *Stewart* explained that Congress and the courts have long interpreted the maritime statutes broadly in order to classify new types of watercraft as vessels. Quoting a Court of Appeals case from 1896, the Supreme Court asserted that “‘so far-reaching are the principles which underlie the jurisdiction of the courts of admiralty that they adapt themselves to all new kinds of property and new sets of operatives and new conditions which are brought into existence in the progress of the world.’”<sup>46</sup>

Furthermore, holding that the CRAB qualifies as a vessel under the Jones Act is consistent with the purpose of the Act. It was enacted by Congress as part of an effort to provide “heightened legal protections” to seamen “because of their exposure to the ‘perils of the sea.’”<sup>47</sup> The Supreme Court has noted that “[t]raditional seamen’s remedies . . . have been ‘universally recognized as . . . growing out of the status of the seaman and his peculiar relationship to the vessel, and as a feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to the sea in ships are subjected.’”<sup>48</sup> Employees on CRABs may be exposed to the precise perils for which Congress has provided heightened legal protection. Here, Lee certainly experienced the perils of the sea when the CRAB became stuck on the ocean floor one hundred feet off the beach and Lee had to swim back to land during inclement weather conditions, including high waves, strong winds, snow, sleet, and cold temperatures.<sup>49</sup>

## V. CONCLUSION

Because the CRAB qualifies as a vessel for purposes of the Jones Act, Great Lakes’ motion for summary judgment is denied. A conference is

44. 543 U.S. at 495, 2005 AMC at 618. (emphasis added).

45. 2005 AMC 2024, 2031, 418 F.3d 138, 144 (2 Cir. 2005) (emphasis added).

46. *Stewart*, 543 U.S. at 497, 2005 AMC at 620 (quoting *Saylor v. Taylor*, 77 F. 476, 479 (4 Cir. 1896)).

47. *Chandris*, 515 U.S. at 354, 1995 AMC at 1845 (citations omitted).

48. *Wilander*, 498 U.S. at 354, 1991 AMC at 926 (quoting *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 104, 1946 AMC 698, 712 (1946) (Stone, C.J., dissenting)).

49. See Injury Report; Lee Dep. at 46:18-47:18.

scheduled for November 29, 2007 at 3 p.m. The Clerk of the Court is directed to close the motion.

