

United States Court of Appeals For the First Circuit

No. 19-1253

MAINE MARITIME ACADEMY,

Plaintiff, Appellant,

v.

JANIS FITCH,

Defendant/ThirdParty Plaintiff, Appellee,

SODEXO OPERATIONS LLC,

Defendant, Appellee,

v.

UNITED STATES,

Third Party Defendant, Appellee.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: June 17, 2019

This is an interlocutory appeal by Plaintiff-Appellant Maine Maritime Academy ("MMA") from the district court's denial of MMA's motion to dismiss Defendant-Appellee Janis Fitch's Amended Counterclaim against MMA for lack of jurisdiction, pursuant to Fed.R.Civ.P. 12(b)(1). MMA contended that Fitch's exclusive remedy was against the United States, pursuant to the Suits in Admiralty Act ("SIAA"), and, specifically, its "exclusivity provision," that bars a plaintiff who can sue the United States under the SSIA from bringing an "action arising out of the same subject matter against the officer, employee, or agent of the United States." 46 U.S.C. § 30904. The district court determined that because "MMA is not an agent of the United States under the SIAA" the court had jurisdiction "over Fitch's counterclaims against MMA." Order, Dkt # 104, p. 22.

MMA filed this interlocutory appeal from the denial of its motion to dismiss, invoking 28 U.S.C. § 1292(a)(3). Presently before us is the opposed motion by Third Party Defendant-Appellee, the United States, to dismiss this interlocutory appeal for lack of jurisdiction. We grant the motion and dismiss the appeal.

Given that "the district court has not yet resolved all of the claims before it . . . [,] the order appealed from is not a final order of the type reviewable by courts of appeals under 28 U.S.C. § 1291." Puerto Rico Ports Auth. v. BARGE KATY-B, 427 F.3d 93, 100 (1st Cir. 2005).

However, Congress has created statutory exceptions to the final judgment rule, including 28 U.S.C. § 1292(a)(3), which allow immediate appeal from some interlocutory orders. Section 1292 provides that "(a) [T]he courts of appeals shall have jurisdiction of appeals from: ... (3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed." An interlocutory appeal under § 1292(a)(3) applies to any order that conclusively determines the liability of a party, even if the order leaves unresolved an issue which may ultimately preclude recovery by a particular plaintiff. Three prerequisites must be met for this court to have jurisdiction to consider this interlocutory appeal pursuant to § 1292(a)(3): "(1) the underlying case must be an admiralty case 'in which appeals from final decrees are allowed;' (2) the appeal must be from an interlocutory order or decree of the district court; and (3) the order or decree must have determined 'the rights and liabilities of the parties.' "

Doyle v. Huntress, Inc., 419 F.3d 3, 6 (1st Cir. 2005) (citations omitted). Only the third prerequisite is at issue here, as it is undisputed that the other two are satisfied.

"[T]o 'ascertain whether, for purposes of § 1292(a)(3), the substantive rights and liabilities of these adversaries were sufficiently determined by the order,' we must identify a decision on the merits of the claims or defenses underlying the dispute which determines substantive rights." Id. at 7 (citations omitted). Although the district court reached a decision on the merits of MMA's Rule 12(b)(1) defense, that decision (that the district court had jurisdiction over the counterclaim against MMA) did not "determine[] substantive rights." Id. The substantive rights raised by the counterclaim (including whether MMA owed to Fitch the duties and obligations owed to a seaman-employee and whether MMA is liable for Jones Act negligence, unseaworthiness, maintenance and cure, and breach of duty to exercise reasonable care) remain pending.

"[A] refusal to dismiss a claim is not appealable where the question of liability remains to be litigated." 2 Schoenbaum, Thomas J., Admiralty & Mar. Law § 21:16 (6th ed.) (Oct. 2018 update). Just such a refusal to dismiss a claim is the subject of this appeal: the district court refused to dismiss Fitch's counterclaim against MMA for lack of jurisdiction. And the question of MMA's liability on those claims "remains to be litigated." Id. See also 4 Force, Robert, Benedict on Admiralty, § 5.09, p. 5-25 ("It seems that generally the denial of a motion to dismiss or denial of

a motion for summary judgment, in as much as the court is not determining the rights and liabilities of the parties, would not be an appealable interlocutory order"); State Bank & Tr. Co. v. C & G Liftboats, L.L.C., 906 F.3d 361, 362 (5th Cir. 2018) ("An order which merely permits a party to proceed in an action is not sufficiently final to grant jurisdiction under Section 1292(a)(3)").

The cases on which MMA relies in opposing the United States' motion to dismiss are inapposite as none of them held that an appeal from the denial of a motion to dismiss a claim fell within the purview of § 1292(a)(3).

The United States' motion to dismiss this interlocutory appeal for lack of jurisdiction is granted.

By the Court:

Maria R. Hamilton, Clerk

cc:

William Henderson Welte
Nicholas H. Walsh
John T. Hugo
Matthew Thomas Giardina Jr.
Jonathan F. Tabasky
Renee M. Bunker
Malinda Robbin Lawrence
Michelle T. Delemarre
James D. Concannon