United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 29, 2024
Lyle W. Cayce
Clerk

No. 24-20399

JOHN BLUDWORTH SHIPYARD, L.L.C.,

Plaintiff—Appellant,

versus

CAPTAIN FRANK BECHTOLT, *Official No. 656965, Her Equipment, Appurtenances, Tackle, Etc., In Rem, also known as The Dredge*,

Defendant,

MANSON CONSTRUCTION COMPANY; CAILLOU ISLAND TOWING COMPANY, INCORPORATED,

Claimants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-3540

PUBLISHED ORDER

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:

John Bludworth Shipyard, L.L.C. seeks a stay pending appeal of a district court order vacating its maritime arrest of the CIT-103, a barge

owned by Caillou Island Towing Company, Inc. The motion is DENIED.[1]

I

This case involves three vessels: (1) the Bechtolt (owned by Manson Construction Company); (2) the Idler (formerly owned by non-party T.W. LaQuay Marine, LLC); and (3) the CIT-103 (owned by Caillou Island Towing Company). The focus of this motion is the CIT-103.

Caillou and Manson both chartered their vessels to LaQuay, giving LaQuay control of all three vessels. LaQuay then hired John Bludworth Shipyard, L.L.C. to work on the vessels to effectively combine them into a single dredging unit, as pictured below. JBS's work included converting the CIT-103, an unpowered flat deck barge, into a "booster barge," which houses a booster pump and increases the efficiency of dredging. It made modifications and added equipment to the CIT-103 such as engines, fuel tanks, pumps, and electrical components.

LaQuay never paid JBS for its work and later filed for bankruptcy. JBS then arrested each of the three vessels to recover on maritime liens.

[1] Judge Oldham would grant the stay.

Caillou appeared as a claimant in the district court and moved to vacate the arrest of the CIT-103. The district court granted Caillou's motion and lifted the arrest of the CIT-103. It found that JBS did not provide "necessaries" to the CIT-103 and as such wasn't entitled to a maritime lien under the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301–31343.

JBS appealed the district court's order.[2] JBS also filed a motion in the district court for a stay pending appeal. The district court denied the motion, finding that JBS had not met its burden to show that a stay pending appeal was warranted.

JBS now moves for a stay in this court.

II

Whether to grant a stay pending appeal is committed to our discretion. *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019). We consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). "The first two factors . . . are the most critical." *Id.* (quoting *Nken*, 556 U.S. at 434).

[2] We have jurisdiction to review this interlocutory appeal under 28 U.S.C. § 1292(a)(3) as the district court's order determined the rights and liabilities of parties in an admiralty case.

III

On factor one, JBS hasn't shown that it is likely to succeed on the merits (or, as JBS argues in the alternative, that this is a "serious legal question" warranting a stay).

"Whether a maritime lien exists is a question of law, reviewed de novo." *Comar Marine, Corp. v. Raider Marine Logistics, LLC*, 792 F.3d 564, 575 (5th Cir. 2015). The Commercial Instruments and Maritime Liens Act provides that a maritime lien exists for "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner." 46 U.S.C. § 31342(a)(1), (2). CIMLA does not define "necessaries." Instead, it provides an illustrative list: "'necessaries' includes repairs, supplies, towage, and the use of a dry dock or marine railway." 46 U.S.C § 31301(4). In that regard, "[n]ecessaries are the things that a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged." *Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 603 (5th Cir. 1986) (en banc) (citing 2 BENEDICT ON ADMIRALTY § 34 (7th ed. 1984)). "Necessaries" include "most goods or services that are useful to the vessel, keep her out of danger, and enable her to perform her particular function." *Id.* They are items useful "to vessel operations" and "necessary to keep the ship going." *Gulf Marine & Indus. Supplies, Inc. v. Golden Prince M/V*, 230 F.3d 178, 180 (5th Cir. 2000); *Silver Star Enterprises, Inc. v. Saramacca M/V*, 82 F.3d 666, 668 (5th Cir. 1996) (quoting *Dampskibsselskabet Dannebrog v. Signal Oil & Gas Co.*, 310 U.S. 268, 280 (1940)). "We look to the 'particular function' and requirements of a ship to determine what is a necessary for that ship." *Cent. Boat Rentals, Inc. v. M/V Nor Goliath*, 31 F.4th 320, 323 (5th Cir. 2022) (quoting *Martin Energy Servs., L.L.C. v. Bourbon Petrel M/V*, 962 F.3d 827, 832–33 (5th Cir. 2020)).

We interpret CIMLA narrowly "to ensure that maritime liens are not lightly extended by construction, analogy, or inference." *Valero Mktg. & Supply Co. v. M/V Almi Sun, IMO No. 9579535*, 893 F.3d 290, 292 (5th Cir. 2018) (internal quotations omitted).

The district court found that the CIT-103's "particular function" was "to operate as a flat unpowered deck barge that loaded and transported equipment using a tugboat as motive power" and that "[a]ll of the work that [JBS] did on the CT-103 was not to serve this particular function." Instead, JBS's work was to serve LaQuay's overall goal to combine the three vessels into the single dredging unit.

The district court relied on two analogous cases. First, it relied on *Martin Energy*. 962 F.3d at 829–33. In that case, three support vessels were used to carry fuel to other vessels conducting seismic surveying operations. *Id.* at 829–30. The plaintiff delivered fuel to the support vessels, and when the owner of support vessels failed to pay for the fuel, plaintiff asserted maritime liens on the support vessels. *Id.* We found that a maritime lien did not exist because services refueling *other* vessels were not "necessary" to the support vessels. *Id.* at 830. A maritime lien runs against a vessel only when "the good or service was provided for use *by the vessel itself*." *Id.* at 833. The district court reasoned that, like in *Martin Energy*, JBS provided services including connecting the CIT-103 to the Bechtolt and Idler vessels and adding equipment to the CIT-103 not for the CIT-103 but for the *other* vessels. Its services contributed not for the function of the CIT-103 itself but for the chief goal of LaQuay to combine the three vessels and increase dredging efficiency.

Second, the district court relied on *Central Boat Services.* 31 F.4th at 322–24. In that case, a general contractor hired the barge M/V Nor Goliath to help decommission oil platforms. *Id.* at 322. The Nor Goliath would lift oil

platforms and place them on barges. *Id.* Then, tugboats would pull the barges to inland scrapyards. *Id.* After the general contractor went bankrupt, the tugboat owners asserted maritime liens against the Nor Goliath. *Id.* at 323. But we held that maritime liens did not exist because the Nor Goliath's "particular function" was to raise and lift platform components, and the tugboats' providing barges to the Nor Goliath was not service a necessary to that function. *Id.* at 324. The "particular function" of the Nor Goliath did not equate to the entirety of the decommissioning process because the decommissioning project was the goal of the general contractor, not the Nor Goliath itself. That the tugboats provided an indirect benefit to the Nor Goliath was irrelevant—"mutually beneficial conduct alone cannot give rise to a maritime lien under CIMLA." *Id.* The district court reasoned that, like in *Central Boat Services*, JBS provided services necessary not to *the CIT-103's particular function* but to LaQuay's overall goal of combining the three barges into the single dredging unit.

JBS argues that the district court erred by considering the CIT-103's particular function from the perspective of Caillou, which used it as a flat deck barge, instead of LaQuay, which used it for the three-part dredging unit. But there is no "element of subjectivity in[] the maritime lien analysis." *Martin*, 962 F.3d at 833. Instead, "A necessary is determined by the need *of the vessel*." *Id.* (emphasis added). The district court properly declined to take into account the subjective viewpoint of either Caillou or LaQuay. And JBS hasn't shown how the services JBS provided to the CIT-103 (adding equipment and joining the three vessels) were to serve the needs of the CIT-103 itself rather than the dredging unit as a whole. Further, courts have denied maritime liens where the services provided "do not fit naturally into this list of traditional shore-to-ship goods and services." *Gulf Marine*, 230 F.3d at 179–180. JBS's services don't fit naturally into that category.

JBS next argues that the district court should have held that a vessel owner can subject itself to a maritime lien by requesting work that changes the function of a vessel. For that proposition, it cites *The Jack-O-Lantern*, 258 U.S. 96 (1922). In that case, the claimant was seeking to recover for work done pursuant to a contract to change a car float barge into an amusement steamer. *Id.* at 98. The issue was whether the work constituted "repairs" or "original construction" for purposes of determining whether the contract was maritime and thus whether the Court had jurisdiction. *Id.* at 98–100. The Court held that the work was for repairs, not new construction, so the contract was maritime. *Id.* But it didn't otherwise opine on whether there was a valid maritime lien or whether the repairs constituted "necessaries." *Id.* True, the Tenth Circuit has held that "the existence of a maritime lien is synonymous with the scope of admiralty jurisdiction." *Chase Manhattan Fin. Servs., Inc. v. McMillian*, 896 F.2d 452, 457 (10th Cir. 1997). But that case isn't binding on us. And, like *The Jack-O-Lantern*, the Tenth Circuit didn't opine on whether the work was "necessary" to the vessel for purposes of a maritime lien. These cases thus aren't sufficient to show that JBS will likely succeed on appeal.

JBS hasn't pointed to any other authority that shows clearly that the district court's analysis was wrong. Because "[w]e are not left with a firm conviction that this holding was erroneous," we find that JBS hasn't shown the likelihood of success necessary for a stay. *United States v. Fluitt*, No. 22-30316, 2022 WL 3098734, at *2 (5th Cir. Aug. 4, 2022).

JBS argues in the alternative that it need not show a probability of success because it instead presents a "substantial case on the merits when a serious legal question is involved." *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981). Not so. "Serious legal questions are matters of 'public concern[]' that go well beyond the interests of the parties." *Hernandez v. Erazo*, No. 23-50281, 2023 WL 3175471, at *5 (5th Cir. May 1, 2023) (quoting *Wildmon v.*

Berwick Universal Pictures, 983 F.2d 21, 24 (5th Cir. 1992)). The facts of this case are unique to these specific parties. JBS hasn't pointed to any case with facts similar to this one. And in the maritime context, such an absence of precedent "signifies the weakness of [JBS's] position since admiralty enjoys an unusually rich legal tradition and, more than any other contemporary area of federal law, relies on venerable precedents where they exist." *Gulf Marine*, 230 F.3d at 180. Because this case does not present questions that would have significant consequences beyond these two parties, it is not a serious legal question that warrants a stay.

Even if JBS had presented a serious legal question, it would still need to show that the remaining three factors are "heavily tilted" in its favor. *Hernandez*, 2023 WL 3175471, at *2 (quoting *Ruiz*, 650 F.2d at 555–56). It has not done so.

On the second factor, JBS makes a stronger showing. It contends that it would suffer irreparable harm if Caillou repossessed the CIT-103 and separated it from the dredging unit. Specifically, JBS claims that this would undo "months of effort and millions of dollars of work for which JBS now seeks to recover through its maritime liens." The value of each of the three barges would be damaged and "all-but-guarantee that JBS would have no meaningful recovery."

But Caillou counters, on the third factor, that *all* parties will suffer injury if we implement a stay and the barges continue to sit idle. JBS itself submitted evidence earlier in the district court proceedings that "in their current location and condition, the barges are subject to deterioration, decay, and potential visitor injury" because they "inevitably deteriorate due to their exposure to the elements and salt and/or brackish water . . . necessitating costly overhaul." And Caillou, of course, will be harmed because it would

continue to be unable to use the CIT-103. These factors together, then, are neutral.

Finally, on the fourth factor, JBS fails to show that the public interest lies in favor of a stay. Its only argument is that the primary purpose of the Federal Maritime Lien Act is to protect suppliers of goods and services, and that the term "necessaries" is to be given broad meaning. *See Tramp Oil & Marine, Ltd. v. M/V Mermaid I*, 805 F.2d 42, 46 (1st Cir. 1986); *Martin Energy*, 962 F.3d at 831. But, to the contrary, there is little benefit to the public interest in holding property in arrest without sufficient reason, "particularly when [JBS] has failed to show a likelihood of success on the merits." *Trend Intermodal Chassis Leasing LLC v. Zariz Transp. Inc.*, 711 F. Supp. 3d 627, 641 (N.D. Tex. 2024). *See also Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 101 (Fed. Cir. 2014) (finding that, given unlikelihood of movant's success on the merits, granting an injunction would not be in the public interest).

IV

As a stay pending appeal is "extraordinary relief," the movant bears a heavy burden. *Plaquemines Par.*, 84 F.4th at 373. Although JBS will suffer injury if we do not grant a stay, JBS fails to show (1) a likelihood of success on the merits, (2) that its case presents a substantial legal question, (3) that other parties won't be injured by the stay, or (4) that the public interest weighs heavily in its favor. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Id.*, citing *Nken*, 566 U.S. at 433.

For these reasons, the motion for stay pending appeal is DENIED.