

FSM SUPREME COURT TRIAL DIVISION

THE PEOPLE OF THE MUNICIPALITY OF TOMIL,)
YAP, by and through CHIEFS STEVEN MAR,)
JOHN KADANNGED, and JESSE FAIMAW,)

CIVIL ACTION NO. 2020-3001

Plaintiffs,)

vs.)

F/V HWA GWO NO. 6, *in rem*, its engines, masts,)
bowsprits, boats, anchors, chains, cables, rigging,)
apparel, furniture and all necessaries thereunto)
pertaining;)

In rem Defendant,)

HUANG SHAO CHOU, CAPTAIN CHERN HER)
TYAN, and LIANCHENG OVERSEAS FISHERY)
(FSM) CO. LTD.,)

In Personam Defendants.)

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Larry Wentworth
Associate Justice

Decided: August 26, 2022

APPEARANCES:

For the Plaintiffs:

Daniel J. Berman, Esq.
111 Chalan Santo Papa, Suite 503
Hagatna, Guam 96910

For the Defendants:
(vessel, Huang Shao Chou,
& Capt. Chern Her Tyan)

Marstella E. Jack, Esq.
P.O. Box 1274
Colonia, Yap FM 96943

For the Defendant: Stephen V. Finnen, Esq.
(Liancheng Overseas Fishery) P.O. Box 1450
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Civil Procedure – Summary Judgment – Procedure

When some defendants did not file a response to the plaintiffs' summary judgment motion, those defendants are deemed to have consented to the motion, which the court will grant if there are good grounds to grant it. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 635 n.1 (Yap 2022).

Admiralty – Maritime Torts

An allision is a vessel's sudden impact with a stationary object such as an anchored vessel, a pier, or a submerged reef. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 635 n.2 (Yap 2022).

Admiralty – Maritime Torts; Jurisdiction – Exclusive FSM Supreme Court

The FSM Supreme Court has jurisdiction over all cases that are maritime in nature, including all maritime torts and injuries. When a case is maritime in nature, it falls under the court's exclusive admiralty and maritime jurisdiction. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts

Maritime torts arise under general maritime law, and maritime law has long recognized maritime tort causes of action for damages resulting from vessel groundings. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty; Admiralty – Maritime Torts; Torts – Negligence

Once admiralty jurisdiction is established, all substantive rules and precepts peculiar to the law of the sea become applicable. A plaintiff's cause will be determined under principles of maritime negligence rather than common law negligence. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts; Torts – Negligence

The maritime tort of negligence exists as a counterpart to state law negligence. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts

The elements of maritime negligence are similar to those of common law negligence. A maritime negligence cause of action's elements are: 1) existence of a duty requiring persons to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) conduct that falls below that standard thus breaching that duty; 3) a reasonably close causal connection between the unreasonable conduct and the resulting injury ("proximate cause"); and 4) an actual loss, injury, or damage to another party. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts

The maritime tort of negligence has developed into an all-purpose cause of action that cuts a wide swathe across all specialized areas of admiralty law. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts; Constitutional Law – Yap; Property – Tidelands; Torts – Trespass

Since the Yap Constitution recognizes traditional rights and ownership of marine resources, Yap Const. art. XIII, § 5, a vessel's unconsented grounding on a reef constitutes a trespass, and since proof of damages is not necessary to prove a trespass, proof of the grounding is itself proof of the trespass. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts; Torts – Nuisance

A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct, and a vessel owner will be liable under a nuisance cause of action when its vessel substantially interferes with the plaintiffs' use and enjoyment of the affected reef both when the vessel was present and afterward because of the resulting damage. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 636 (Yap 2022).

Admiralty – Maritime Torts

A vessel, and the mariner commanding it, have a duty to navigate safely, and, in Yapese waters, they also have a duty not to cause any damage to the reef and marine resources. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

Admiralty – Maritime Torts

Liability for collisions, allisions, and other types of marine casualties is based upon a finding of fault (breach of duty) that caused or contributed to the damage incurred. The standard of care against which fault is determined is derived from 1) general concepts of prudent seamanship and reasonable care; 2) statutory and regulatory rules governing the movement and management of vessels and other maritime structures; and 3) recognized customs and usages. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

Admiralty – Maritime Torts

There are a number of presumptions in collision law that are directed to the issue of fault – breach of a duty. One is that when an unmoored, drifting vessel strikes an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. This presumption does not apply when an allision is with a submerged hidden object, unless the object was visible or the vessel otherwise possessed knowledge of the object's location. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

Admiralty – Maritime Torts

Knowledge of an otherwise non-visible object warrants imposition of presumed negligence against those operating the vessel that possesses this knowledge because, if the submerged object's presence is known, then the accident was neither fortuitous nor unavoidable. Thus, when the vessel's captain knew of the reef's existence and location, which was why the vessel hove to off Yap and was waiting for daytime and better visibility to navigate the channel through the reef and into port, whether the reef was visible that night is immaterial. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

Admiralty – Maritime Torts

When the defendants fail to overcome the allision presumption or show that an exception to it applies, the court will hold the vessel, its captain, and its owner liable for maritime negligence, with nuisance liability flowing from the defendants' same negligent conduct, and trespass liability arising from the grounding itself, regardless of fault. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

Admiralty – Maritime Torts; Marine Resources – Regulation of – Fishing Permits

An FSM fishing access agreement may provide that the permit holder, its authorized vessel, and the vessel's operators are jointly and severally liable for any environmental damage caused by the vessel or its operators and any loss or damage to property caused by the vessel or its operators. People of Tomil *ex rel.*

Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 632, 637 (Yap 2022).

* * * *

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

This comes before the court on the Plaintiffs' Motion for Partial Summary Judgment Re: Liability, filed November 5, 2021; Defendants' Response to Motion for Summary Judgment, filed November 22, 2021, by defendant Liancheng Overseas Fishery (FSM) Co. Ltd.¹ ("Liancheng"); and the Plaintiffs' Reply to Response to Motion for Summary Judgment, filed January 12, 2022. The motion is granted. The reasons follow.

I. BACKGROUND

This class action arises from the F/V *Hwa Gwo No. 6*'s allision² with and grounding on the Yap outer reef in the Paelak Channel area (purportedly in Tomil Municipality), and its attempted removal therefrom. On the night of September 16-17, 2020, the longliner F/V *Hwa Gwo No. 6* arrived off Yap. Due to heavy rain and low visibility, the vessel remained outside of the reef and away from the pilot station, waiting for an appropriate time, 7 a.m., September 17, 2020, to enter the channel and make port. Captain Chern Her Tyan let the vessel drift towards the island (and the pilot station). A crewman was left on deck to monitor the water, weather changes, and any passing vessels. At 3 a.m., while the Captain was below working on the ship's catch log, the F/V *Hwa Gwo No. 6* ran hard aground on the reef. Efforts to remove it from the reef were unsuccessful.

On October 13, 2020, the People of the Municipality of Tomil, by and through their Chiefs Steven Mar, John Kadannged, and Jesse Faimaw, filed this suit against the vessel, its owner (Huang Shao Chou), its captain (Chern Her Tyan), and its charterer and operator (Liancheng), alleging that the defendants' maritime negligence, unseaworthiness, trespass, and nuisance caused damage to their reef. The F/V *Hwa Gwo No. 6* was finally removed from the reef in February or March 2021. The court certified the plaintiffs as a class on May 4, 2021. People of Tomil *ex rel.* Mar v. F/V Hwa Gwo No. 6, 23 FSM R. 268, 276 (Yap 2021).

II. SUMMARY JUDGMENT MOTION

The plaintiff class moves for partial summary judgment on the issue of the defendants' joint liability for the damage to the Yap outer reef in the Paelak Channel area on their negligence (and apparently) trespass and nuisance causes of action. The plaintiffs assert that they have traditional usage or ownership rights to that reef area and therefore to have suffered damages.

Liancheng responds that it does not dispute that the F/V *Hwa Gwo No. 6* ran aground on the reef on September 17, 2020, but asks that the court limit the plaintiffs' relief to that which they specifically sought. They note that summary judgment was not sought on the nature, extent, or amount of damages, all of which should be reserved for trial. Liancheng adds that the plaintiffs would also have to prove at trial that they have or had an ownership interest in the damaged reef area. Liancheng further states that state law should be followed because state law controls tort claims.

¹ The other defendants did not file a response to the plaintiffs' motion. They are therefore deemed to have consented to the motion, FSM Civ. R. 6(d), which the court will grant if there are good grounds to grant it. *Senda v. Mid-Pacific Constr. Co.*, 6 FSM R. 440, 442 (App. 1994).

² An allision is a vessel's sudden impact with a stationary object such as an anchored vessel, a pier, or a submerged reef. *People of Weloy *ex rel.* Pong v. M/V Micronesia Heritage*, 12 FSM R. 613, 616 n.1 (Yap 2004).

III. MARITIME TORTS

The FSM Supreme Court has jurisdiction over all cases that are maritime in nature, including all maritime torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990). This case is maritime in nature. It thus falls under the court's exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, § 6(a).

The plaintiffs' causes of action are maritime torts. Maritime torts arise under general maritime law. See People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006), *aff'd sub nom.*, M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49 (App. 2008). Maritime law has long recognized maritime tort causes of action for damages resulting from vessel groundings. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

"[O]nce admiralty jurisdiction is established all substantive rules and precepts peculiar to the law of the sea become applicable; a plaintiff's cause will be determined under principles of maritime negligence rather than common law negligence." 1 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 5-2, at 156 (2d ed. 1994) (citing Pope & Talbot v. Hawn, 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143 (1953)); see also Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015) (with admiralty jurisdiction comes the application of substantive admiralty law); Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013) (same). The maritime tort of negligence "exists as a counterpart to state law negligence." 1 SCHOENBAUM, *supra*, § 5-2, at 155 (citing Leathers v. Blessing, 105 U.S. (15 Otto) 626, 26 L. Ed. 1192 (1882)).

Admiralty jurisdiction has been established. The court will therefore determine this case under the principles of general admiralty and maritime law rather than state common law. The elements of maritime negligence are similar to those of common law negligence.

A maritime negligence cause of action's elements are: (1) existence of a duty requiring persons to conform to a certain standard of conduct in order to protect others against unreasonable risks; (2) conduct that falls below that standard thus breaching that duty (usually called "negligence"); (3) a reasonably close causal connection between the unreasonable conduct and the resulting injury, (often called "proximate cause"); and (4) an actual loss, injury, or damage to another party.

M/Y Truk Master, 22 FSM R. at 19 (citing M/V Kyowa Violet, 14 FSM R. at 416); see also People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012). "[T]he maritime tort of negligence has developed into an all-purpose cause of action that cuts a wide swathe across all specialized areas of admiralty law." 1 SCHOENBAUM, *supra*, § 5-2, at 156.

Since the Yap Constitution recognizes traditional rights and ownership of marine resources, Yap Const. art. XIII, § 5, a vessel's unconsented grounding on a reef constitutes a trespass, and since proof of damages is not necessary to prove a trespass, proof of the grounding is itself proof of the trespass. M/Y Truk Master, 22 FSM R. at 21.

FSM admiralty law also recognizes a cause of action for nuisance. M/V Kyowa Violet, 14 FSM R. at 416. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012) (Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to dry land interests). A vessel owner will be liable under a nuisance cause of action when its vessel substantially interferes with the plaintiffs' use and enjoyment of the affected reef both when the vessel was present and afterward because of the resulting damage. *Id.*

IV. ANALYSIS

A. *Duty*

A vessel, and the mariner commanding it, have a duty to navigate safely, and, in Yapese waters, they also have a duty not to cause any damage to the reef and marine resources. M/Y Truk Master, 22 FSM R. at 19. Liability for collisions, allisions, and other types of marine casualties is based upon a finding of fault (breach of duty) that caused or contributed to the damage incurred. *Id.* at 19 & n.1. The standard of care against which fault is determined is derived from 1) general concepts of prudent seamanship and reasonable care; 2) statutory and regulatory rules governing the movement and management of vessels and other maritime structures; and 3) recognized customs and usages. *Id.* at 19-20.

B. *Breach of Duty*

There are a number of presumptions in collision law that are directed to the issue of fault – breach of a duty. One is that when an unmoored, drifting vessel strikes an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. M/Y Truk Master, 22 FSM R. at 20. This presumption does not apply, however, when an allision is with a submerged hidden object, unless the object was visible or the vessel otherwise possessed knowledge of the object's location. *Id.* (party invoking the presumption has the burden of proving either that the object was visible or that the vessel otherwise possessed knowledge of the object's location).

Knowledge of an otherwise non-visible object warrants imposition of presumed negligence against those operating the vessel that possesses this knowledge because, if the submerged object's presence is known, then the accident was neither fortuitous nor unavoidable. *Id.* In this case, the plaintiffs have shown through material obtained in discovery, see Mot. Ex. 2, that the vessel's captain knew of the reef's existence and location. That is why the F/V *Hwa Gwo No. 6* hove to off Yap and was waiting for daytime and better visibility, to navigate the channel through the reef and into port. Whether the reef was visible that night is thus immaterial.

When the defendants fail to overcome the allision presumption or show that an exception to it applies, the court will hold the vessel, its captain, and its owner liable for maritime negligence. M/Y Truk Master, 22 FSM R. at 21. Nuisance liability flows from the defendants' same negligent conduct. And trespass liability arises from the grounding itself, regardless of fault. The defendants do not dispute that there was a grounding on a Yapese reef. A ship's owner is liable for the ship's maritime torts. See People of Gilman, 18 FSM R. at 176. And, for most purposes, a charterer is treated as an owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408-09 (Yap 2005).

Moreover, Liancheng's fishing access agreement with the FSM provides that Liancheng, its authorized vessel (in this case the F/V *Hwa Gwo No. 6*), and the vessel's operators are jointly and severally liable for any environmental damage caused by the vessel or its operators and any loss or damage to property caused by the vessel or its operators. Fishing Access Agreement Between the Nat'l Oceanic Res. & Mgt. Auth. & Liancheng Overseas Fishery (FSM) Co. Ltd. ¶¶ 79.2, 79.3.

C. *And Breach of Duty Causing Damages Equals Liability*

The defendants also do not dispute that the F/V *Hwa Gwo No. 6*'s allision with and grounding on the Yap outer reef was the proximate cause of some damage to the reef. Accordingly, no questions of fact or law remain concerning the defendants' liability for damages caused by the F/V *Hwa Gwo No. 6*'s September 17, 2020 grounding on the Yap outer reef. The extent, severity, and value of that damage is undetermined. The parties have left that for later determination – by trial (or settlement).

V. CONCLUSION

NOW THEREFORE IT IS HEREBY ORDERED that the motion is granted and partial summary judgment on the defendants' liability on the plaintiffs' maritime negligence, nuisance, and trespass causes of action is entered. Left for proof at trial is the plaintiffs' ownership interest in the damaged reef and the extent and amount of those damages, and presumably, the plaintiffs' unseaworthiness cause of action, if the plaintiffs intend to go forward on that.

* * * *