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7 do not possess the collateral property. Rather, the trustee retains possessory rights. Boodrow, therefore, did not truly retain possession of his car after discharge.

Judge Shadur also disagreed with the majority's reasoning that the court was still able to grant relief to Capital if it agreed with Capital's interpretation of § 521(2). The majority had reasoned that relief could take the form of remanding back to the bankruptcy court with an order to compel Boodrow to comply with the statute, which the majority explained was Capital's real purpose in filing its motion to lift the stay. The dissent reasoned that Capital had not filed a motion to dismiss or compel Boodrow to comply with § 521(2). Capital's motion to lift the stay was an end total in itself. The only reason that Capital filed a motion to lift the automatic stay was to pursue further remedies under state law. The dissent suggested that the majority had read additional requests for relief into Capital's motion to create a live controversy. Since Capital had only requested relief in the form of lifting the stay, the majority was essentially rewriting Capital's motion. Therefore, when the bankruptcy court discharged Boodrow, no additional controversy remained regarding Capital's motion to lift the stay.

The dissent further dismissed Capital's claim that the case should be heard as an exception to the mootness doctrine because the issue was "capable of repetition, yet evading review." The exception allows certain special issues into review even if they are moot. The dissent explained that the exception to the mootness doctrine was only applicable in special circumstances: both where the case ended too soon so that the issue was never fully litigated prior to becoming moot, and where one could reasonably expect that the injured party would probably face the same issue again in future proceedings. The dissent found that such an exception did not apply because prior judicial deliberations in other jurisdictions showed that the courts had fully litigated the validity of reinstatement under § 521(2). The dissent contended that the court lacked jurisdiction to hear the merits of Capital's motion to lift the automatic stay when it became moot.

In addressing the merits of interpreting § 521(2), the dissent contended that Congress had listed all of a debtor's options in § 521(2). That section only provides three options: surrender, redemption, or reaffirmation. Accordingly, the phrase, "if applicable," does not give the debtor a fourth option to keep the collateral and continue payments. Furthermore, the dissent pointed out that the 45-day time limit specified in § 521(2) means that a debtor cannot continue payments for months or years under reinstatement and remain consistent with such a time limit. The dissent also stated that, because reinstatement options are not mentioned in any other provision of the Code, the provisions of § 521(2) must be exclusive. The dissent also noted that debtors would obviously opt for reinstatement over any other option under § 521(2) because a debtor would not have to pay the full balance of his loan in one lump sum payment or negotiate with his creditors in a reaffirmation agreement where he would have substantially inferior bargaining power. Though reinstatement is desirable to debtors, if Congress did not intend for the debtor to have a reinstatement option, the court may not devise a new alternative for the debtor.

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Purchaser of Ship Allowed to Recover for Damage to Ship's Equipment

By Zachary Raimi

In ***Saratoga Fishing Co. v. J.M. Martinac & Co.*, 117 S. Ct. 1783 (1997), on remand *sub nom. Saratoga Fishing Co. v. Marco Seattle Inc.*, 122 F.3d 1250 (1997)**, the United States Supreme Court reversed the United States Court of Appeals for the Ninth Circuit by holding that a plaintiff in admiralty may recover for physical damage that a defective portion of a ship caused to equipment that the original owner added to the ship before the plaintiff purchased the vessel. The Court found that Plaintiff could recover under admiralty tort rules because the added equipment was not part of the "product itself" -- the ship -- but rather was "other property" distinct from the ship.

Defective Hydraulic System Caused Fishing Vessel to Sink

In the early 1970s, J.M. Martinac & Company ("Martinac") manufactured a ship, a component of which was a hydraulic system that Marco Seattle Inc. ("Marco") had built. After Joseph Madruga ("Madruga") purchased the ship, he added equipment to the vessel, including a skiff and a seine net, in order to use the ship for tuna fishing. Then, in 1974, Madruga resold the ship to Petitioner Saratoga Fishing Company ("Saratoga"). In January of 1986, a fire erupted in the boat's engine room, and the vessel flooded and sank.

As a result, Saratoga brought a tort suit in admiralty against Respondents Martinac and Marco. The district court found that the defectively designed hydraulic system caused the ship to sink. Accordingly, the court awarded Saratoga damages for the loss of the equipment that Madruga had installed (minus a portion of the claimed damages because Saratoga was partially at fault). Both sides appealed to the Ninth Circuit Court of Appeals, which reversed the lower court's ruling.

Ninth Circuit Reversed Based on East River Doctrine

The Ninth Circuit first noted that the "*East River* doctrine" controls in admiralty tort law when a defective product causes physical damage. In *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858 (1986), the Supreme Court held that tort plaintiffs in admiralty cases "cannot recover for the physical damage the defective product causes to the 'property itself,' but the plaintiff can recover for physical damage the product causes to 'other property.'" In coming to this conclusion, the *East River* Court reasoned that the loss of the "property itself" constituted an economic loss for which tort law generally denies recovery. The Court explained that physical damage to a product and the loss of its value was similar to the loss of a product's value that did not function properly from the moment it was purchased. In these cases, the Court noted that contract and warranty law govern based on the bargain struck between the parties.

The Ninth Circuit interpreted *East River* to determine whether the equipment Madruga added to the ship was part of the "product itself," not "other property." The appellate court found that the "product itself" was the ship that Plaintiff had purchased, including the added equipment, because it was the product that Plaintiff could have, theoretically, bargained with the seller to put under warranty when he purchased the vessel. Therefore, the appellate court reasoned under the *East River* doctrine, Plaintiff could not recover tort damages for an injury to the equipment on the ship. Saratoga appealed and the Supreme Court granted certiorari to clarify the proper application of *East River*.

Supreme Court Determined That Saratoga Could Recover for Added Property

The Supreme Court rejected the Ninth Circuit's interpretation of East River and held that any additions to property after its initial purchase from the manufacturer or distributor are not part of the "property itself" but are "other property." Further, plaintiffs may recover under tort law for damages that defective products cause to this "other property." The Court, in an opinion written by Justice Breyer, advanced several reasons for this holding. First, the Court declared that the Ninth Circuit's decision would wrongfully immunize product manufacturers from tort liability "beyond that set by any relevant tort precedent." The Court explained that the Ninth Circuit's decision undermined an underlying policy of tort law -- encouraging the production of safer items. If Saratoga were not allowed to recover, the manufacturer would be immune from liability merely because of the fortuity that Saratoga purchased the ship from a previous user and was not the initial user. The Court explained that this result would not encourage manufacturers to create safe products.

Further, the Court questioned the Ninth Circuit's conclusion that a reseller would give the subsequent purchaser a warranty covering property damage. It would be difficult for a reseller to offer an adequate warranty; after all, he would not have been involved in the manufacturing of the ship, and therefore, would be unfamiliar with the risks of such a warranty. Additionally, the Court noted that Respondents did not demonstrate that it was "ordinary business practice" for users/resellers to offer warranties to subsequent buyers. Hence, even though the subsequent buyer would lack a warranty from the product's manufacturer or distributor, the Court reasoned that it would be inappropriate to expect the reseller to warrant a product he was reselling for potential damages.

The Court also dismissed Respondents' two additional arguments. First, Respondents had claimed that the Court's holding would allow a user to recover damages for every component part of the ship except the defective one, in this case, the hydraulic engine. The Court rejected this argument because lower courts have held that the vessel, not its component parts, is the "product" that has caused the damages when a component part of the vessel malfunctions and damages the entire ship. Therefore, a ship owner cannot recover in tort for the damage to components of the ship but must look to the manufacturer's warranties for compensation.

Second, Respondents argued that the Court's holding would unreasonably expand the manufacturer's or distributor's tort liability. The Court rejected this argument because many other tort principles, such as proximate cause and foreseeability, already limit tort liability, and because potential liability would exist even if the initial user had retained possession of the product.

Dissnet Defined "Product" as the Object of the Purchaser's Bargain

According to Justice Scalia, joined by Justice Thomas, the Supreme Court should not have granted this case certiorari. Justice O'Connor, who separately dissented, disagreed with Justices Scalia and Thomas only on this point. Scalia argued that the Court had no precedent directly addressing the issue before the Court and asserted that the case should have been left to the lower courts as the Supreme Court has little experience in creating common law principles.

Nonetheless, Scalia proceeded to analyze the merits. First, the dissent revealed facts that the majority opinion did not explore. Specifically, Madruga appeared to be in the business of designing and assembling tuna boats; in fact, the boat sold to Saratoga was Madruga's third of seven commissions. Moreover, Madruga was heavily involved in the original construction of the ship. Hence, Scalia reasoned that Martinac's original boat was a component of the tuna fishing vessel that Madruga intended to resell later as a finished product. Therefore, the additional equipment was another component part of the "product" -- the tuna fishing vessel that Saratoga purchased.

Scalia objected to the majority's assertion that a product is "fixed" as a product once it is sold to the initial user, even if that user is in the business of "modifying and reselling that product." Scalia argued that the case should not hinge on whether a defective product caused damage to added equipment before or after the party who added equipment resells the product. Scalia argued that if Madruga was in the business of buying and selling tuna fishing boats, it should not matter if he briefly used the boat prior to its sale. Plaintiff should not be able to recover tort damages that he could not recover if he had purchased the ship directly from the manufacturer with the added equipment.

Scalia next argued that the Court should have selected a different rule to support its conclusion. For example, the "seller rule" under the Restatement (Second) of Torts § 402A (1964) was more appropriate. Under this rule, a product would be "fixed" when the last person in "the chain of distribution" sells the boat. This rule would be consistent with the East River Court's concern that tort protection should be used only when a buyer cannot obtain a warranty under a contract to purchase.

Another rule the majority could have selected was the "object-of-the-bargain rule," which many state courts have adopted. This rule considers the product that a buyer purchased or bargained for to decide whether the added equipment is "other property." Under this approach, the dissent implied that Madruga's addition would not be considered "other property" since Saratoga purchased the vessel with the equipment already in place. In sum, Justices Scalia, Thomas and O'Connor disagreed with the majority and would have ruled differently in this case.

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