



Neutral

As of: May 2, 2018 3:36 PM Z

## Russo v. APL Marine Servs.

United States Court of Appeals for the Ninth Circuit

June 6, 2017, Argued and Submitted, Pasadena, California; July 28, 2017, Filed

No. 15-56816

### Reporter

694 Fed. Appx. 585 \*; 2017 U.S. App. LEXIS 13732 \*\*; 2017 WL 3207057

VALERIE RUSSO, an individual, Plaintiff-Appellant, v. APL MARINE SERVICES, LTD., a Delaware Corporation, Defendant-Appellee.

MOTZ, \*\* District Judge.

### Opinion

---

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** [\*\*1] Appeal from the United States District Court for the Central District of California. D.C. No. 2:14-cv-03184-ODW-JCG. Otis D. Wright II, District Judge, Presiding.

[Russo v. APL Marine Servs., Ltd., 135 F. Supp. 3d 1089, 2015 U.S. Dist. LEXIS 128787 \(C.D. Cal., Sept. 24, 2015\)](#)

**Disposition:** AFFIRMED.

### Core Terms

---

district court, unseaworthiness, statutes, negligent infliction of emotional distress, jury instructions, summary judgment, physical attack, termination, harassment, correctly, vicious, savage, amend

**Counsel:** For VALERIE RUSSO, an individual, Plaintiff - Appellant: Michael Joseph Faber, Law Offices of Michael J. Faber, Los Angeles, CA; Charles D. Naylor, Esquire, THE LAW OFFICES OF CHARLES NAYLOR, San Pedro, CA; Dawn M. Schock, Esquire, Attorney, SK Appellate Group, LLP, San Pedro, CA.

For APL MARINE SERVICES, LTD., a Delaware Corporation, Defendant - Appellee: Margaret Chandler Bell, Attorney, Joseph Edward Pelochino, Andrews Lagasse Branch & Bell LLP, San Diego, CA; Albert E. Peacock, Attorney, Glen Richard Piper, Esquire, Attorney, Keesal, Young & Logan, Long Beach, CA.

**Judges:** Before: BEA and HURWITZ, Circuit Judges, and

[\*585] MEMORANDUM\*

Valerie Russo, a crewmember on the APL Korea, sued the ship's owner, APL Marine Services, Ltd. ("APL"), and its captain, James Londagin, alleging state law and maritime claims arising out of alleged harassment by Londagin after their romantic relationship ended and the termination of her employment. After the district court granted partial summary judgment in favor of APL on Russo's [\*\*2] claims for harassment, discrimination, retaliation, wrongful termination, and unseaworthiness, a jury returned a defense verdict on Russo's Jones Act claim for negligent infliction of emotional distress. On appeal, Russo challenges a jury instruction on the *Jones Act* claim and the summary judgment on her other claims.<sup>1</sup> We affirm.

[\*586] 1. Even assuming Russo properly objected to the jury instruction concerning negligent infliction of emotional distress, there was no error. The district court faithfully articulated the Jones Act zone of danger test set forth by the Supreme Court in [Consolidated Rail Corp. v. Gottshall, 512 U.S. 532, 547, 114 S. Ct. 2396, 129 L. Ed. 2d 427 \(1994\)](#).

2. Russo argues that the district court erred in rejecting her unseaworthiness claim because she produced no evidence of a "savage and vicious physical attack." The court correctly

---

\*\* The Honorable J. Frederick Motz, United States District Judge for the District of Maryland, sitting by designation.

\*This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

<sup>1</sup>The district court dismissed Russo's battery claim for failure to state a claim, but granted leave to amend. Russo did not amend her complaint, and does not contest the dismissal on appeal.

rejected this claim. An unseaworthiness cause of action arises only if there has been a physical attack that results from the "savage and vicious" disposition of a member of the crew. See, e.g., *Boorus v. W. Coast Trans-Oceanic S.S. Line*, 299 F.2d 893, 894-95 (9th Cir. 1962); see also *Boudoin v. Lykes Bros. S.S. Co.*, 348 U.S. 336, 339-40, 75 S. Ct. 382, 99 L. Ed. 354 (1955).

3. The district court did not err in dismissing Russo's claims under the [California Fair Employment and Housing Act](#). California courts presume that the California legislature "did not intend to give its statutes any extraterritorial [\*\*3] effect" unless "such intention is clearly expressed or reasonably . . . inferred" from the statute's text, its purpose, or legislative history. *N. Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 162 P. 93, 94 (Cal. 1916). The FEHA contains no such clear evidence of intent. See *Campbell v. Arco Marine, Inc.*, 42 Cal. App. 4th 1850, 50 Cal. Rptr. 2d 626, 633 (Ct. App. 1996).

4. The district court correctly dismissed Russo's California constitutional claim for the same reason. "Ordinarily, [r]ules of construction and interpretation that are applicable when considering statutes are equally applicable in interpreting constitutional provisions." *Morgan v. Imperial Irrigation Dist.*, 223 Cal. App. 4th 892, 167 Cal. Rptr. 3d 687, 698 (Ct. App. 2014) (alteration in original) (citation omitted). We find no indication that the antidiscrimination provision in the California constitution was intended to apply to employment that occurs predominantly outside of the state on the high seas.

**AFFIRMED.**