

JUN 28 2018

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REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

LITO MARTINEZ ASIGNACION,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 RICKMERS GENOA)
 SCHIFFFAHRTGESELLSCHAFT)
 MBH & CIE, KG,)
)
 Defendants-Appellee.)
 _____)

Supreme Court Case No. 2016-003
High Court Civil Action No: 2016-026

DECISION ON APPEAL

Plaintiff Lito Martinez Asignacion (“Asignacion”) was employed by Defendant Rickmers Genoa Schiffahrtgesellschaft MbH & Cie Kg (“Rickmers”) as a fitter aboard Rickmers’ vessel, the M/V Rickmers Dalian (“Vessel”) from February 2010 to October 2010. On October 27, 2010, Asignacion sustained serious injuries while working aboard the Vessel.

On November 12, 2010, Asignacion filed a civil action in Louisiana State Court against Rickmers seeking damages for his October 27, 2010 injuries. Asignacion alleged claims for Jones Act negligence and unseaworthiness under U.S. maritime law.

On May 16, 2012, the Louisiana State Court action was stayed pending arbitration in the Phillipines, as required by Asignacion’s employment contract. After the February 15, 2013 arbitration award, Asignacion filed a new action in Louisiana, seeking to have the Phillipines arbitration award set aside. Ultimately, on April 16, 2015 the Fifth Circuit Court of Appeals found the award valid and enforceable.

On February 9, 2016, more than five years after his injury, Asignacion filed the present

suit seeking damages under RMI law.

By Order dated November 10, 2016, High Court Chief Justice Carl B. Ingram dismissed the complaint under MIRCP 12(b)(6) on the grounds that it was barred by the RMI's two-year statute of limitation under 47 MIRC § 862 (2)(c) and the doctrine of res judicata. Because we agree the case is barred by the statute of limitations, we do not address the applicability of res judicata.

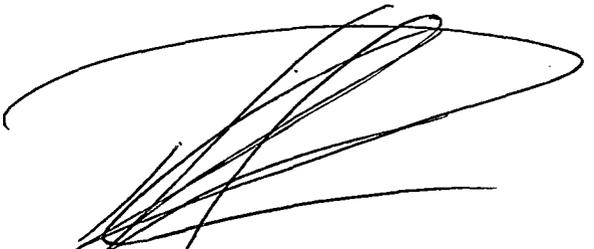
Asignacion admits that he failed to file suit within the two-year RMI statute of limitations. His sole argument is that the statute is equitably tolled based on his prosecution of the suit in Louisiana. "Equitable tolling applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time." *Stoll v. Runyon*, 165 F. 3d 1238, 1242 (9th Cir. 1999).¹

Asignacion satisfies neither prong. First, there is no evidence that Rickmers prevented Asignacion from filing a timely claim in the RMI. And second, there was no extraordinary circumstances beyond Asignacion's control that made it impossible for him to file a timely claim. He easily could have filed a claim in the RMI and then sought a stay of either the RMI or Louisiana action. Or he could have simply filed in the RMI and not Louisiana. In short, the decision to file or not file in the RMI within the two-year statute rested with Asignacion. He

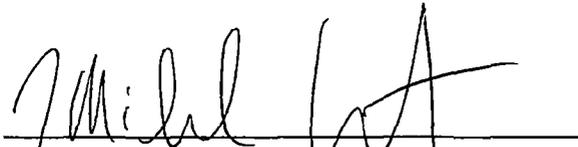
¹ A third exception can exist if a plaintiff mistakenly files in a court with incorrect venue. See *Burnett v New York Cent. R. Co.*, 380 US 424 (1965). No such exception exist here.

cannot now claim that any circumstance beyond his control made it impossible to file a timely claim.

Dated this 20th day of June, 2018.



Daniel Cadra, Chief Justice



J. Michael Seabright, Associate Justice



Richard Seeborg, Associate Justice