**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the twenty-first day of October two thousand and eight.

PRESENT:

JON O. NEWMAN,
ROGER J. MINER,
JOSÉ A. CABRANES,

Circuit Judges.

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Gas Natural SDG S.A.,

Plaintiff-Appellant,

v. No. 07-2129-cv

UNITED STATES OF AMERICA,

Defendant-Appellee,

- -x

APPEARING FOR APPELLANT: JAMES D. KLEINER, Hill Betts & Nash LLP, New York, New York.

APPEARING FOR APPELLEE: C. FREDERICK BECKNER III (M. Robb Hyde, Deputy Assistant Attorney General, Peter R. Frost, Director, Aviation and Admiralty *on the brief*) U.S. Department of Justice, Washington, D.C.

Appeal from a judgment of the United States District Court for the Southern District of New York (Deborah A. Batts, *Judge*).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is **AFFIRMED**.

Plaintiff-appellant, Gas Natural, a supplier of liquid natural gas ("LNG") to Spanish markets, appeals a March 22, 2007 order of the District Court granting summary judgment to defendant, United States of America, after plaintiff sued defendant pursuant to the Suits in Admiralty Act, 46 U.S.C. §§ 30901–30918, and the Public Vessels Act, 46 U.S.C. §§ 31101–31113. In addition to challenging the District Court's grant of summary judgment, plaintiff avers that the court erred in striking from the record certain affidavits and documentary evidence. We assume the parties' familiarity with the facts and procedural history of the case.

We review a district court's grant of summary judgment *de novo*, construing the record in the light most favorable to the non-moving party. *See Hoyt v. Andreucci*, 433 F.3d 320, 327 (2d Cir. 2006). "An order granting summary judgment will be affirmed only when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law." *Riegel v. Medtronic, Inc.*, 451 F.3d 104, 108 (2d Cir. 2006); *see* FED. R. CIV. P. 56(c). We review the District Court's decision to strike evidence from the record for abuse of discretion. *See Fashion Boutique of Short Hills, Inc. v. Fendi USA, Inc.*, 314 F.3d 48, 58 (2d Cir. 2002).

We hold that the District Court did not err in granting summary judgment to defendant. In admiralty law, it is well established that "a tort to the person or property of one man does not make the tortfeasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong." *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 309 (1927) (Holmes, *J.*). In short, there exists "a bright line rule barring recovery for *economic losses* caused by an unintentional maritime tort absent physical damage to property in which the victim has a *proprietary interest.*" *Conti Corsi Schiffahrts-Gmbh & Co. KG NR v. M/V "PINAR KAPTANOGLU,"* 414 F. Supp. 2d 443, 446-47 (S.D.N.Y. 2006) (emphasis added) (citing *Fed. Commerce & Navigation Co., Ltd. v. The M/V MARATHONIAN*, 528 F.2d 907 (2d Cir. 1975)); *see also Brown v. Royal Caribbean Cruises, Ltd.*, Nos. 99-ICIV.2435, 99-CIV.11774 2000 WL 34449703, at *5 (S.D.N.Y. Aug. 24, 2000) ("[P]laintiffs who suffer no physical injury to their person or property from an alleged maritime tort may not recover for alleged economic losses, even though such losses may be deemed a foreseeable consequence of defendant's conduct.").

In this case, plaintiff was barred from suing defendant to recover economic losses because plaintiff did not have a proprietary interest in the NORMAN LADY. In particular, plaintiff did not establish that it had "'actual possession or control, responsibility for repair and responsibility for maintenance'" of the vessel. *See In re Moran Enterprises Corp.*, 77 F. Supp. 2d 334, 340-341 (E.D.N.Y. 1999) (quoting *IMTT-Gretna v. Robert E. Lee SS*, 993 F.2d 1193, 1194 (5th Cir. 1993)). Under the charter party between plaintiff and the vessel's owner, plaintiff bore no responsibility for maintenance or repair of, among other things, the ship's hull, cargo tanks, engines, tackle, living and working spaces, boilers, and navigational systems. In fact, plaintiff was entitled to reduce its payments to the owner in the event that the owner failed to adequately maintain the ship.

Plaintiff's argument that it need not demonstrate a proprietary interest in the vessel because it was engaged in a common venture with the NORMAN LADY is unavailing. The Supreme Court has established that a cargo owner who does not have a proprietary interest in a vessel may, under some circumstances, pursue a cause of action arising from a third-party tortfeasor's negligence if the cargo owner was engaged in a "common venture" with the carrying vessel. *See Aktieselskabet Cuzco v. The Sucaresco ("The Toluma")*, 294 U.S. 394, 405 (1935). However, this principle is of no help to plaintiff in this case because plaintiff did not own cargo aboard the NORMAN LADY at the time of its collision with the USS OKLAHOMA CITY. As the District Court correctly noted, when the collision occurred, the NORMAN LADY had already docked and offloaded all of plaintiff's LNG that was intended for sale. Only a small amount of plaintiff's LNG remained on the vessel, and it served as "heel," meaning that it was used to insulate the vessel's LNG storage tanks. Pursuant to the charter party between plaintiff and the owners of the NORMAN LADY, the heel was also available as fuel for the vessel. Because it was necessary to fuel the ship and cool storage tanks, and because it was not designated for sale, the heel cannot be deemed cargo in this case. We therefore hold that the District Court did not err in finding that plaintiff was not engaged in a common venture with the owners of the NORMAN LADY at the time of the collision.

Finally, plaintiff's claim that the District Court abused its discretion in striking from the record affidavits and documentary evidence offered to demonstrate plaintiff's proprietary interest in the NORMAN LADY is without merit. Plaintiff's proffered evidence related to its post-collision investment in the vessel and was not relevant to the question whether plaintiff had a proprietary interest in the NORMAN LADY at the time of the collision.

For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT,

Catherine O'Hagan Wolfe, Clerk of Court

By ________________________________