

300 Fed.Appx. 469, 2008 WL 4867052 (C.A.9 (Wash.))
(Not Selected for publication in the Federal Reporter)
(Cite as: 300 Fed.Appx. 469, 2008 WL 4867052 (C.A.9 (Wash.)))

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
 Ninth Circuit.
 Michael BELL, Plaintiff-Appellant,
 v.
 FISHING COMPANY OF ALASKA, INC.; et al.,
 Defendants-Appellees.

No. 07-35390.
 Argued and Submitted Oct. 20, 2008.
 Filed Nov. 3, 2008.

Background: Employee brought action against employer under the Jones Act to recover for injuries he allegedly sustained at work. The United States District Court for the Western District of Washington, [Ricardo S. Martinez, J.](#), granted employer's partial summary judgment motion.

Holdings: The Court of Appeals held that:
 (1) genuine issues of material fact existed as to seaworthiness of vessel, and
 (2) genuine issues of material fact existed as to whether placement of garbage can made stairway not reasonably fit for intended use.

Reversed and remanded.

West Headnotes

[1] Federal Civil Procedure 170A 2512

[170A](#) Federal Civil Procedure
[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)2](#) Particular Cases
[170Ak2512](#) k. Shipping and Seamen, Cases Involving. [Most Cited Cases](#)

Genuine issues of material fact existed as to seaworthiness of vessel on which seaman was employed, related to the lack of handrails on both sides of stairway, precluding summary judgment on seaman's Jones Act claim against employer under the Jones Act. [46 App.U.S.C.\(2000 Ed.\) § 688](#).

[2] Federal Civil Procedure 170A 2512

[170A](#) Federal Civil Procedure
[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)2](#) Particular Cases
[170Ak2512](#) k. Shipping and Seamen, Cases Involving. [Most Cited Cases](#)

Genuine issues of material fact existed as to whether the placement of garbage can made stairway on sea vessel not reasonably fit for its intended use and the proximate cause of seaman's injuries, precluding summary judgment in favor of employer on seaman's Jones Act claims for his injuries. [46 App.U.S.C.\(2000 Ed.\) § 688](#).

***469** [John Merriam](#), [John Merriam](#) Attorney at Law, Seattle, WA, [Dennis O'Bryan](#), Esquire, O'Bryan Baun CohenKuebler Karamanian, Birmingham, MI, for Plaintiff-Appellant.

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[Michael A. Barcott](#), Esquire, Holmes Weddle & Barcott, APC, Seattle, WA, for Defendants-Appellees.

Appeal from the United States District Court for the Western District of Washington, [Ricardo S. Martinez](#), District Judge, Presiding. D.C. No. CV-06-00195-RSM.

Before: [O'SCANNLAIN](#), [RYMER](#), and [KLEINFELD](#), Circuit Judges.

MEMORANDUM ^{FN*}

^{FN*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

****1** [\[1\]\[2\]](#) The district court was not entitled to make a credibility determination ***470** adverse to Bell on summary judgment. [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Viewed in a light most favorable to Michael Bell, the cognizable evidence established a genuine issue of fact as to seaworthiness. See [Ribitzki v. Canmar Reading & Bates, L.P.](#), 111 F.3d 658, 664 (9th Cir.1997). Bell's testimony about the garbage can suffices to establish a genuine issue of fact about whether the placement of the garbage can made the stairway not reasonably fit for its intended use, proximately causing Bell's injuries. See *id.* at 664-65. Likewise, particularly in the light of the lower quantum of the evidence necessary to support a finding of negligence under the Jones Act, [Havens v. F/T Polar Mist](#), 996 F.2d 215, 218 (9th Cir.1993), the same evidence sufficed to establish a genuine issue of fact regarding negligence. Though the defendant's expert witness might have some persuasive force to a trier of fact, the district court, rather than the expert, would be obligated to decide what the law was, and Bell's own testimony, under oath, sufficed to establish a genuine issue of material fact. [Fed.R.Civ.P. 56\(c\)](#).

REVERSED and REMANDED for trial.

C.A.9 (Wash.),2008.
 Bell v. Fishing Co. of Alaska, Inc.
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