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CMA CGM Libra

On 10th November 2021, the Supreme Court upheld the decision of the Court of Appeal and first instance decision of Sir Nigel Teare, holding the Owner liable for the Master's failure to exercise due diligence in drawing up the passage plan, resulting in the grounding of the Vessel.

The CMA CGM Libra [2021] UKSC 51

The CMA CGM Libra grounded while leaving the port of Xiamen, China on 8th May 2011. The Master chose to navigate outside the dredged fairway despite the fact that warnings had been issued as to the unreliability of charted depths outside the fairway. During the passage planning process the Master and navigation officer had failed to mark those warnings on the passage plan. It was found that, had those warnings been marked on the chart, the Vessel would have stayed within the fairway and would not have grounded.

The cargo interests rejected the Owners' claim for general average contributions, amounting to some US$13 million, on the basis that the grounding was caused by the Owner's "actionable fault".

At first instance, Mr Justice Teare found the Vessel to be unseaworthy, in breach of Article III.1 of the Hague Visby Rules, on the basis that the passage plan was defective before the commencement of the voyage and such breach was causative of the grounding. The Court of Appeal and, in turn the Supreme Court unanimously upheld Teare J's decision, providing final clarity to various issues of great importance to the industry.

A question of seaworthiness

The court dismissed the Owner's argument that the deficiency did not constitute unseaworthiness because it was not an attribute of the Vessel. The Owner sought to distinguish between seaworthiness, which concerns the attributes and equipment of the vessel, and the navigation and management of the vessel, which concerns how the crew operates the vessel using those attributes and equipment. On this, the Supreme Court commented that "the purpose of a passage plan is to assist in the safe navigation of the vessel. … There can be no doubt that a vessel would be unseaworthy if she began her voyage without a passage plan. The same must be true if she did so with a defective passage plan which endangered the safety of the vessel."

The “prudent owner” test

Previous case law has established the test on seaworthiness to be “whether a prudent owner would have required the relevant defect, had he known of it, to be made good before sending his ship to sea” (*McFadden v Blue Star Line* [1905] 1 KB). Applying the “prudent owner” test, Teare J considered it inconceivable that a prudent owner would allow the Vessel to proceed without the relevant warnings being marked on the chart. The Supreme Court agreed with the application of the principle in this case.

Non-delegable duty

Furthermore, the court confirmed that the Owner’s obligation to exercise due diligence is non-delegable, so the Owners were responsible for the Master’s failure in respect of the passage plan. It did not matter, as the Owner argued, that the Owner itself had exercised due diligence in providing the Master with all the tools necessary to draw up the passage plan.

In relation to passage planning, the Supreme Court commented that the carrier’s Art III.1 obligation to have systems in place, to ensure that proper passage planning takes place, is not the limit of the carrier’s obligation and stated that “if the task of making the vessel seaworthy has been entrusted by the carrier to [its] servants or agents then (if relevant) they are acting qua carriers and under article III rule 1 of the Hague Rules the carrier is responsible for any causative failure by them to exercise due diligence”.

Conclusions

It is now clear that a vessel is likely to be unseaworthy if she begins her voyage with a defective passage plan which endangers the safety of the vessel. Not all defects in a passage plan will render a vessel unseaworthy: it will be a question of severity of the defect, applying the prudent owner test. However, the owner’s duty in this respect is non-delegable and it is not enough for owners to say that they had given the Master all the tools he needed.

It is worth noting that, once the voyage has commenced, the position may be different since the exceptions in article IV, rule 2(a) of the Hague Visby Rules are potentially available, allowing an owner to rely on the navigational fault exception.

A shipowner’s obligation to exercise due diligence to make a vessel seaworthy is fundamental to all contracts of carriage of goods by sea and the issues involved in this case have therefore been closely followed by the industry. The Supreme Court’s judgment will form a starting point for any future cases involving issues of seaworthiness.

If you have any questions or queries regarding the CMA CGM Libra or your own matter, please contact our

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