THE “VINALINES PIONEER” [2015] SGHC 278

Tan Hui Tsing
Gurbani & Co LLC

Gurbani & Co LLC

Facts

- The vessel *Phu Tan* carried cargo in containers but capsized and sank in the Gulf of Tonkin.

- The plaintiff arrested sister ship, *Vinalines Pioneer* in Singapore and commenced an action for the loss of 111 containers loaded on board *Phu Tan*.

Facts

- Plaintiff relied on the following sections under the High Court (Admiralty Jurisdiction) Act ("HCAJA") as basis for claim against the vessel:-

- s3(1)(d) any claim for damage done by a ship;

- s3(1)(g) any claim for loss of or damage to goods carried in a ship;

- s3(1)(l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance.

Facts

- This particular judgment deals with the interpretation of s3(1)(d).

- On appeal, the defendant contended *inter alia* that the plaintiff's claim did not fall within the meaning of "*a claim for damage done by a ship*" under s3(1)(d) HCAJA as the damage to or loss of the containers was caused by the carrying ship (i.e. the offending ship).

Parties' contentions

Plaintiff's contentions	Defendant's contentions
Plaintiff argued that loss of containers was damage done by ship. The Phu Tan should be considered to be the instrument of damage and that the ship should not be treated as merely a passive environment where the incident happened. The externality criterion was not needed for a maritime claim to fall within the legal character of s3(1)(d). Relied on *Nagrint v The Ship Regis* (1939) 61 CLR 688 ("*The Regis*"); *Fournier v the Ship Margaret Z* [1999] 3 NZLR 111 ("*the Margaret Z*"); *Union Steamship Co of New Zealand Ltd v Ferguson* (1969) 119 CLR 191 ("*Union*")	Defendant argued that the loss of containers was not damage done by ship but was part of the damage done to the ship due to the sinking. Relied on the externality criterion in *Berliner Bank AG v C Czarnikow Sugar Ltd (The Rama)* [1996] 2 Lloyd's Rep 281 ("*The Rama*")

Court's Holdings

- The Court held that the claim for damage done by a ship under s3(1)(d) of the HCAJA was not made out.

- The phrase "damage done by a ship" under s3(1)(d) did not include damage or loss to cargo or other property on board the offending vessel.

Court's Holdings

- The Court accepted that the externality criterion for the following reasons.

- Firstly, the Court concluded that there is no jurisdiction *in rem* under English law of the property or person being on board the offending vessel.

Court's Holdings

- The Court took dressing from D R Thomas, *Maritime Liens* (Stevens & Sons, 1980) ("*Thomas*") and other admiralty cases to identify the categories of "*damage*" that is within the phrase "*damage done by ship*".

- Such categories included (1) damage done by a ship to a person on board another ship resulting in personal injury and (2) damage done by a ship to cargo and property carried on board another ship.

Court's Holdings

- Secondly, the externality criterion was accepted by the Hong Kong Court of Appeal in *Re Asian Atlas* [2008] 3 HKC 169.

- [18] "*Relevant damage must be caused by something done physically or directly by the ship herself in the course of her navigation or management. By definition, such damage must be caused to persons or objects external…*"

Court's Holdings

- Thirdly, the cases which rejected the externality criterion, i.e. *The Margaret Z* and *Union,* relied on *The Minerva* [1933] P 224, which has been queried as persuasive authority.

- *Griffith Price, The Law on Maritime Liens (Sweet & Maxwell, 1940)* – author doubted *The Minerva*, commenting: *"[i]t does not ...seem possible to arrest a ship if the damage was not done by the vessel as 'the instrument of mischief', and was not the 'direct and natural consequence of a wrongful act or manoeuvre' of the ship"*.

- *Prof William Tetley, Maritime Liens and Claims (International Shipping Publications, 2nd Ed, 1998)* observed that *The Minerva* "ignored" the navigation criterion.

Court's Holdings

- The rejection of the externality criterion by *The Margaret Z* was also criticized by the deputy director of NUS Law's Centre of Maritime Law in Paul Myburgh, "*Shipping Law*" [1999] NZLR 387

- He explained that such a holding would open up the possibility of an entirely new category of maritime lien which could turn established expectations, interests and priorities on their heads. Cargo claims which traditionally occupies the place as a statutory lien claim may potentially move into a maritime lien category.

Court's Holdings

- Three criteria had to be fulfilled in establishing jurisdiction under s3(1)(d) of the HCAJA:
  - Damage had to be founded on the fault or breach of duty by those in control of the ship
  - The ship had to be the actual or noxious instrument by which damage was caused.
  - Damage had to be sustained by property external to the ship.

Court's Holdings

- On the facts, the sinking of the *Phu Tan* was damage sustained by the ship.

- Loss of containers on board the *Phu Tan* was not something which *Phu Tan* could have contacted directly in the physical sense or indirectly.

- The loss of containers was the result of damage "*to*" the *Phu Tan* and not "*by*" the *Phu Tan*.

Other Pointers

- Cargo owners should commence an action under section 3(1)(g) and 3(1)(h) of the HCAJA if their cargo was lost on board the carrying vessel.

- 3(1)(g) and 3(1)(h) are for "*claim for loss of or damage to goods carried in a ship*" and "*claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship*" respectively.

Other Pointers

- Reason why plaintiff commenced action against defendant under s3(1)(d) and not s3(1)(g) and s3(1)(h) was because they were not cargo owners but container owners.

- Container holders do not have a cause of action against the vessel under s3(1)(g) and s3(1)(h). The Vinalines Pioneer [2015] SGHCR 1, *The "Escherscheim"* [1976] 2 Lloyd's Rep 1 ("*The Eschercheim*")

THANK YOU

Gurbani & Co LLC