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MSC Mediterranean Shipping Co SA v Stolt Tank Containers B.V. an ors [2023] EWCA Civ 1007

Summary

- The Court of Appeal has dismissed MSC's appeal, holding that it was not entitled to limit its liability for claims brought by owners Conti in respect of damage to the MSC Flaminia.
- The High Court had made a number of factual findings, with the result that the only claims remaining in issue were those based on costs which could be categorised as being incurred for the purpose of returning the Vessel to service under the charterparty, specifically those costs: (a) of discharging and decontaminating the cargo at Wilhemshaven; (b) of removing the contaminated water and burnt waste material from the Vessel; and (c) in relation to payments made to national authorities in respect of pollution prevention measures.
- The Court held that MSC, as charterer, was only entitled to limit its liability in respect of claims that originate with an entity which does not fall within the extended definition of "shipowner" in the 1976 Convention on Limitation of Liability for Maritime Claims.

Background

- The claimant/appellant ("**MSC**") chartered the container ship MSC Flaminia (the "**Vessel**") from the defendant/respondent ("**Conti**") on a long-term charter. On 14 July 2012, when the Vessel was in the mid-Atlantic, an explosion in a cargo hold caused a large fire on board. The explosion was caused by the auto-polymerisation of a chemical known as DVB, which was in one or more of the tank containers on board.
- The salvors brought the fire under control, which resulted in about 30,000mt of contaminated and toxic water remaining in the holds. The Vessel was unable to complete its voyage to Antwerp,

and the cargo was discharged at Wilhemshaven. The decontamination, discharge and repair processes were not concluded July 2014.

- Conti brought claims in arbitration against MSC to recover its losses, and in 2021 were awarded damages of approximately US\$200 million.

High Court proceedings

- MSC commenced an Admiralty limitation claim, seeking to limit its liability for claims arising from the casualty pursuant to the 1976 Convention on Limitation of Liability for Maritime Claims (the "**1976 Convention**"). If MSC were entitled to limit its liability under the 1976 Convention, the damages figure would be approximately US\$34.6 million.
- Mr Justice Baker held that MSC was not entitled to limit its liability because Conti's claim was properly characterised as a single claim in respect of damage to the Vessel, and therefore did not fall within the scope of Article 2.1 of the 1976 Convention.

Grounds of appeal

- MSC appealed on the basis that Baker J was wrong to hold that Conti's claims did not fall within Article 2.1 of the 1976 Convention.
- Conti argued that a charterer can only limit in respect of claims that originate with an "outsider", that is, an entity which does not fall within the extended definition of "shipowner" in Article 1.2 of the 1976 Convention (i.e. liabilities that originate from an entity which is not the owner, charterer, manager or operator of a seagoing ship). In essence, a charterer is not entitled to limit claims where the underlying loss or expense was suffered by the owner itself.

Appeal judgment

- Lord Justice Males, giving the lead judgment with which Lady Justice Falk and Sir Launcelot Henderson agreed, dismissed the appeal with reference to Conti's respondent's notice.
- Conti submitted that Article 2 must be interpreted to exclude claims by an owner against a charterer to recover losses incurred by the owner itself. Conti's interpretation of the 1976 Convention was derived from Articles 1, 2 and 9 to 11, summarised as follows by Males LJ:

"... Article 9 provides for a single limit of liability applicable to the aggregate of all claims arising on any distinct occasion against the persons within the definition of 'shipowner'... Article 11 provides for the constitution of a fund by any of those persons, which ... once constituted, is deemed to have been constituted by all such "insiders", and against which any claimant may claim. Article 10 provides that limitation may be invoked, where applicable, notwithstanding that a limitation fund has not been constituted; but provides the important qualification that national law may provide that the right to invoke limitation arises only if a fund is constituted." [para. 67]

- The Court held that Conti's interpretation and conclusion was in line with the Vienna Convention on the Law of Treaties 1969 (the "**Vienna Convention**"), and judicial authority including the Court of Appeal judgment in *The CMA Djakarta* (as approved *obiter* by the Supreme Court in *The Ocean Victory*). This line of authority provided that it was appropriate to refer back to earlier conventions on tonnage limitations, once the ordinary meaning of the 1976 Convention had been ascertained.
- Males LJ agreed with previous authority that the right to limit liability was conferred on charterers by the 1957 International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships (the "**1957 Convention**"), the immediate predecessor of the 1976 Convention. The 1957 Convention provided no right to the charterer to limit in respect of claims by an owner to recover losses suffered by that owner, and it was not the purpose of the 1976 Convention to extend a charterer's rights beyond those conferred by the 1957 Convention.

- As the appeal was dismissed by reference to Conti's notice, MSC's grounds of appeal did not therefore fall to be addressed, although Males LJ did so briefly on the assumption that he had found in MSC's favour [see paras. 81 – 94].

Comment

- MSC's appeal was based on the argument that Conti's claims did not fall within Article 2 of the 1976 Convention. However, the appeal turned on Conti's respondent's notice which advanced a narrower argument than that submitted to the High Court (that Article 2 applies only to losses originally suffered by an "outsider"). In any event, the Court was not persuaded by two out of three of MSC's grounds of appeal concerning whether the claims fell within Article 2.1.
- This case is a useful reminder that the Court will interpret international conventions with reference to the international principles of interpretation, particularly those set out in Articles 31 and 32 of the Vienna Convention, which include reference back to predecessor conventions.

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