



**THE COURT OF APPEAL**

**Peart J.  
Hogan J.  
Gilligan J.**

Neutral Citation Number: [2018] IECA 153

**[2016/200]**

**BETWEEN**

**PATRICK SHEEHY**

**PLAINTIFF /**

**APPELLANT**

**AND**

**THE MINISTER FOR FINANCE, IRELAND**

**AND THE ATTORNEY GENERAL**

**DEFENDANTS /**

**RESPONDENTS**

**AS CONSOLIDATED PURSUANT TO ORDER DATED THE 12TH DAY OF JANUARY 2015 WITH RECORD NUMBER 2010/1600 P.  
PATRICK SHEEHY [PLAINTIFF/APPELLANT] AND BALLYCOTTON MARINE SERVICES LIMITED AND CARBERY ISLES FERRIES  
LIMITED [DEFENDANTS/ RESPONDENTS]**

**JUDGMENT of Mr. Justice Gilligan delivered on the 15th day of May 2018**

**Background**

1. This is an appeal by the plaintiff/appellant from that part of the judgment of the High Court (Noonan J.) delivered on the 19th March 2016 and the order arising therefrom as perfected on the 1st April 2016 insofar as it relates to an award of damages of €100,000 and costs to the appellant arising from the loss of a boat the "Atlantic Mariner" (hereinafter referred to as "the vessel") and the dismissal of a claim as brought by the appellant for damages for loss of use of the vessel.
2. The background circumstances are that the appellant acquired the vessel in 1990 in the United States of America and in 1996 brought the vessel to Ireland where it was registered in 1997. The vessel had a steel hull and was used in respect of fishing. On the 3rd March, 2008 the vessel was arrested while anchored at Church Strand in the county of Cork on foot of a warrant issued to the Admiralty Marshall and passed on to the customs and excise division in West Cork for execution.
3. On the 11th March 2008 as a result of storm force winds in the Church Strand area the vessel dragged her anchors and was then towed by the first named defendants, its servants or agents, to a mooring in Church Strand Bay where subsequently the vessel foundered and was declared a total loss giving rise for the appellant's claim for damages in these proceedings. The trial judge held the defendants responsible for the loss of the vessel and this aspect is not under appeal.
4. The trial judge had before him considerable conflicting evidence as regards the condition and value of the vessel.
5. In the course of the judgment the trial judge referred to the fact that the appellant had suffered a heart attack, had diabetes and had twice undergone surgery for cancer and concluded that in or about 2006 the plaintiff resolved to retire from the fishing business, probably on grounds of ill health.
6. Further, the trial judge took the view that it was of considerable significance that the vessel actually carried out very little fishing in 2006 and 2007. The figures indicated a total of 35 days fishing in 2006 and 65 in 2007. The trial judge concluded that it seemed to him to be probable that the condition of the vessel deteriorated quite significantly in the three-year period between 2005, when a significant amount was expended on it, and 2008 when it was lost.
7. The trial judge then went on to conclude his judgment in respect of both aspects of the matters currently under appeal in stating;

"Doing the best I can based on all of the foregoing evidence I think that in 2005 the true value of the plaintiff's vessel was of the order of €300,000 to €400,000 but its subsequent deterioration and poor history over the succeeding three years meant it was in truth unlikely to have retained more than a quarter to a third of that value. It is common case that significant expenditure up to the level of €100,000 would have been required if the vessel were to continue fishing beyond 2010 when stricter new regulations came into effect. Taking all these matters into account I conclude that on the balance of probabilities the plaintiff's vessel was worth €100,000 at the date of its loss.

With regard to the loss of use claim, the evidence of Mr. McCarthy was that the plaintiff approached him in early January 2008 to ask him if he would be interested in renting the vessel from April that year on a five-year lease at €6,000 per month. Mr. McCarthy indicated he was so interested but it would be subject to significant upgrading works being done on the boat and of course its compliance with the 2010 regulations. All of those works would have required expenditure, probably in excess of €100,000 and the plaintiff was clearly not in a position to fund such expenditure. Indeed he never pursued his discussion with Mr. McCarthy in early January and went on on the 26th February 2008 to apply for decommissioning without even notifying Mr. McCarthy. I am therefore satisfied that the plaintiff would never have been in a position to enter into any leasing arrangement with Mr. McCarthy and therefore the loss claimed under this heading must fail.

The evidence has driven me to conclude that had the vessel never been arrested, once the decommissioning application failed, it is likely that the plaintiff would simply have left it where it was in Church Strand Bay indefinitely. Given his parlous financial position, there was in reality very little incentive for the plaintiff to make further efforts to deal with the vessel since any funds it generated were going to be accrued for the benefit of the bank."

8. Mr. Noel O'Regan, the chief engineer of Promara Limited, giving evidence for the plaintiff, valued the vessel in 2005 at €600,000.00 and that following the fitting of a new engine the value in his opinion was €650,000.

9. Dominic Daly, a chartered surveyor, gave evidence on behalf of the first named defendants and he questioned as to whether the vessel had any value at all due to its age, conversion and lack of fishing. Mr. Daly did not dispute Mr. O'Regan's valuation of €600,000 in the earlier years and indicated on a number of occasions that he only saw the vessel at the time of its arrest. He accepted that lack of fishing would not devalue a vessel.

10. Michael John Connolly, the Managing Director of Ballycotton Marine Services, a defendant to the proceedings, carried out an inspection of the vessel after its arrest and he concluded that the vessel had very little value. He did not dispute Mr. O'Regan's valuation of the vessel in 2005 in the sum of €600,000.

11. Mr. Finn, an executive officer with Customs & Excise, gave evidence that the vessel was in a poor condition and at the time of arrest was essentially a dead ship.

12. Denis McCarthy, a fisherman, boarded the vessel in 2006 and at that time he gave evidence that the vessel was in a very good condition. He had considered purchasing the vessel in 2006 when the appellant had put it up for sale at an asking price of €600,000 but he had no interest at that level but Mr. McCarthy had an interest in 2008 in leasing the vessel and was prepared to do so.

13. Vincent O'Driscoll, a Director of Carberry Isle Ferries, also a defendant in the proceedings, gave evidence that the vessel was "rough enough".

14. John Kearney, the Principal of Baltimore Diving and Water Sports Centre gave evidence that he had been involved as a diver for over 28 years and he lived in Baltimore overlooking the site where the vessel was moored and saw it every morning and every evening. He was asked to do a dive survey of the vessel in the summer of 2010 and was out on the vessel approximately four times. On two of these occasions he was involved in diving activities. He confirmed that the engine machinery and all the necessary fishing equipment was onboard the vessel, including three winches and the hybus as well as the ice shuttle. Mr. Kearney confirmed in evidence that from his experience of boats the vessel was in quite good condition and it looked in very good condition compared to a lot of other vessels that were operating at the time.

15. There was evidence before the trial judge that in fact the appellant had not himself ever fished the vessel but used to retain skippers and crews to do so, so that his health was not relevant as to whether the boat was fished or not.

16. There was evidence adduced that a sum of in or around €20,000 would have to be spent in the context of Mr. McCarthy leasing the vessel to make it ready to go to sea for fishing and evidence from Mr. O'Regan that it would cost between €60,000 and €80,000 to make the necessary alterations for the boat to comply with the 2010 regulations when they came into effect.

17. There were varying views on the condition of the boat but perhaps not insignificantly there was the evidence of Mr. Kearney that when he was on board on a number of occasions in 2010 he considered the boat to be in good condition and it is at least unclear as to whether or not the trial judge took the views of Mr. Kearney into account in considering the condition of the boat as of 2010.

18. It also appears to be the case that no evidence was adduced by any witness that the value of the boat would have diminished by a quarter to a third of its value by reason of the fact that it had not been fished and had in effect been laid up. In this regard there was also the evidence of Mr. Dominic Daly, a witness called on behalf of the State defendants, who accepted that a lack of fishing would not devalue a vessel.

19. The trial judge in coming to his conclusion does not differentiate between the evidence of the various witnesses who valued the vessel at different times, and as regards its condition, or as to the evidence of which witness he was preferring in this regard and as to the basis of such preferment and conversely the evidence of which witness he was rejecting and the basis for such a conclusion.

20. As was emphasised by Clarke J. in *Doyle v. Banville* [2012] IEHC 25 the parties to proceedings are entitled to know why they won or lost and further:

"To that end it is important that the judgment engages with the key elements of the case made by both sides and explains why one or other side is preferred. Where, as here, a case turns on very minute questions of fact as to the precise way in which the accident in question occurred, then clearly the judgment must analyse the case made for the competing versions of those facts and come to a reasoned conclusion as to why one version of those facts is to be preferred. The obligation of the trial judge, as identified by McCarthy J. in *Hay v. O'Grady*, to set out conclusions of fact in clear terms needs to be seen against that background."

and further:-

"Part of the function of an appellate court is to ascertain whether there may have been significant and material errors in the way in which the trial judge reached a conclusion as to the facts. It is important to distinguish between a case where there is such an error, on the one hand, and a case where the trial judge simply was called on to prefer one piece of evidence to another and does so for a stated and credible reason. In the latter case it is no function of this Court to seek to second guess the trial judge's view."

21. In my view it was essential in the particular circumstances of the factual evidence adduced before the trial judge that the judgment engaged in the case made by all the parties to the proceedings and an explanation given in the particular circumstances that arise in this instance why one or other side is being preferred, especially against a background where for instance there was evidence adduced on behalf of the appellants that in 2005 the value of the vessel was €600,000 and following the fitting of the new engine was valued at €650,000 and evidence on behalf of the defendants that in fact the vessel was of no value. Accordingly I take the view that the trial judge fell into error.

22. In these circumstances I take the view that the appeal should be allowed and I would remit the matter back to the High Court for

an assessment of damages only as regards the value of the vessel on the date it foundered.

23. As regards the second aspect of the appeal in relation to the appellant's claim for damages for loss of use, which was dismissed by the trial judge, in my view, this aspect is intertwined with the issue as to the value of the vessel, its condition and the amount necessary to be spent on it for the purpose of putting to sea to fish and the issue as to the appellant's health and a possible return by the vessel to fishing. In addition, the trial judge does not consider the conflicting evidence and indicate any preference for the evidence of any particular witness on why that preference is being exercised. In these circumstances, allowing for the factors as set out in Clarke J. in *Doyle v. Banville* as referred to above, I would allow the appeal set aside the judgment and order of the High Court dismissing the claim for damages for loss of use of the vessel and refer the matter back to the High Court for an assessment of damages only in respect of the claim for loss of use.