

The "Mezen"
[2006] SGHC 35

Case Number : Adm in Rem 32/2005
Decision Date : 23 February 2006
Tribunal/Court : High Court
Coram : Daphne Hong Fan Sin AR
Counsel Name(s) : Francis Goh (Ari Goh and Partners) for the plaintiffs; Thio Ying Ying and Edgar Chin (Kelvin Chia Partnership) for the defendants
Parties : —

23 February 2006

Assistant Registrar Daphne Hong:

1 This case concerned a claim by the plaintiffs against the defendants for damages arising from the defendants' alleged wrongful detention of or interference with the plaintiffs' equipment, which were on board the defendants' vessel, Mezen ("the vessel"). On 17 March 2005, the plaintiffs successfully applied for the arrest of the vessel in order to secure their claim.

2 The defendants in turn applied to set aside the writ of summons and the warrant of arrest and in addition, sought damages for wrongful arrest. This application came before me and after hearing both parties, I allowed the application to set aside the writ and the warrant on the basis that this claim did not fall within the admiralty jurisdiction of the court. However, I declined to award damages for wrongful arrest. Neither party appealed against the decision and the vessel was eventually released on 21 April 2005.

3 The defendants have now requested that I furnish the grounds of decision for the setting aside of the writ of summons and the warrant of arrest, specifically, on whether this claim fell within the admiralty jurisdiction of the court. This is because the plaintiffs have launched a similar claim in Sri Lanka and have recently arrested the vessel there as security for their claim. At the hearing of the defendants' application to lift the warrant of arrest, the Sri Lankan court has asked the defendants to obtain the grounds of decision of this court on this issue. I now give the grounds of my decision.

Background

4 The warrant of arrest obtained by the plaintiffs was not the first involving the vessel. The vessel was previously arrested in Singapore on 12 January 2005 by the Laboratory of Regional Geodynamics Limited (In Liquidation) ("the charterers"), which had chartered the vessel from the defendants for sub sea seismic exploration. The suit by the charterers against the defendants was for damages for breach of the charterparty.

5 On 18 January 2005, whilst the vessel was under arrest, the charterers sold the seismic equipment on board the vessel ("the equipment") to the plaintiffs for US\$1.4 million. The plaintiffs then intervened in the suit and on 14 February 2005, applied to the court for leave to off-load the equipment. This application was heard and allowed by the High Court on 18 February 2005. The learned Judge however imposed the condition that the plaintiffs bear the costs and insurance relating to the off-loading works. In addition, as the defendants had contested the plaintiffs' right to the equipment, the Judge also ordered the plaintiffs to provide an indemnity to the defendants to cover the cost of the equipment in the event the defendants establish their right over the same.

6 Following this, there were numerous disputes between the plaintiffs and the defendants concerning how the off-loading works were to be carried out. As a result, despite the order, the equipment on board the vessel was in fact not completely offloaded.

7 In the meantime, on 15 February 2005, the defendants applied to set aside the writ of summons and the earlier warrant of arrest obtained by the charterers. On 17 March 2005, the application was granted – the writ and the warrant were set aside and the charterers were also ordered to pay damages for wrongful arrest to the defendants. On the same day, the plaintiffs applied for and obtained the present warrant of arrest against the vessel.

The application

8 In the plaintiffs' affidavit filed in support of the application for the warrant of arrest, the plaintiffs submitted that their claim against the defendants fell within sections 3(1)(g) and 4(4) of the High Court (Admiralty Jurisdiction) Act ("the Act"). They contended that they had a reasonable cause of action and the writ and the warrant should accordingly be allowed to stand.

9 The defendants challenged the writ and the warrant on numerous grounds –

(a) the admiralty jurisdiction of the court was wrongly invoked in that the claim did not fall within the ambit of section 3(1)(g) of the Act;

(b) no valid cause of action accrued at the time the writ was filed as the detention or interference of the equipment alleged by the plaintiffs only occurred after the commencement of the suit;

(c) there was no reasonable cause of action as the vessel was under arrest at the material time and hence only the Sheriff had control over the equipment on board the vessel. Since the defendants had no power to release the equipment to the plaintiffs, a claim that the defendants had wrongfully detained or interfered with the equipment had no chance of success;

(d) the plaintiffs had failed to disclose material facts in their affidavit filed in support of the application for the arrest; and

(e) there was bad faith and malice or alternatively, gross negligence as to imply malice, in the arrest of the vessel, which justified the defendants getting damages for wrongful arrest.

10 The issues that arose before me were hence whether the plaintiffs' claim fell within the ambit of section 3(1)(g) of the Act, whether the plaintiffs had a valid or reasonable cause of action, whether there was material non-disclosure of facts and whether the arrest was tainted by *mala fides* or alternatively gross negligence amounting to *mala fides* on the plaintiffs' part. Given the urgency of the request for the grounds of decision, I would only address the first issue in these grounds.

Ambit of section 3(1)(g) of the Act

11 Section 3(1)(g) provides that the admiralty jurisdiction of the court shall extend to "any claim for loss of or damage to goods carried in a ship." Under section 2 of the Act, the word "goods" is defined to include "baggage".

12 Before me, counsel for the plaintiffs urged the court to give a broad and liberal construction

to section 3(1)(g). Counsel submitted that the clause "claim for" in the sub-section meant "arising out of" and was wide enough to cover both tortious and contractual claims (see *The Eschersheim* [1974] 3 All ER 307 and *The Antonis P Lemos* [1985] 1 All ER 695). It would encompass the loss of right to goods and was not restricted to physical destruction of goods. In the instant case, the plaintiffs' claim would fall under this limb as the plaintiffs had been deprived of their right to the equipment arising out of the defendants' wrongful detention of or interference with the same. The defendants did not oppose the meaning of "claim for" as contended by the plaintiffs' counsel and I too had no difficulty accepting the above.

13 The real dispute between the parties was over the clause "goods carried in a ship". Citing the definition of the word "goods" from various dictionaries, the plaintiffs argued that the ordinary and natural meaning of "goods" was "all chattels of which possession is possible notwithstanding that they are not easily moveable" and "goods carried in a ship" meant "whatever conveyed in a ship" or "the load carried in a ship". In this case, the equipment on board the vessel was a chattel capable of being off loaded (that is, capable of being moved) and it also formed the load of the vessel. The equipment thus fell within the scope of "goods carried in a ship".

14 On the other hand, the defendants contended that "goods carried in a ship" was confined to "goods carried as cargo on board a ship". The authority for this could be found in the case of *The Eschersheim*, where the English court had occasion to consider the ambit of "goods carried in a ship" under section 1(1)(g) of the Administration of Justice Act 1956. Section 1(1)(g) was in *pari materia* with section 3(1)(g) of the Act. In that case, the court held that "goods carried in a ship" referred only to "goods carried as cargo", on the basis of the long established decision of *R v City of London Court Judge* [1883] 12 QBD 115. The court went on to hold that even though "goods" was extended to include "baggage" by section 8(1) of the Administration of Justice Act, in the context of section 1(1)(g), "baggage" carried in a ship should only be construed as covering the belongings of passengers or travellers and not the belongings of those on board a ship as employees of the shipowners to man and operate the ship. The master and crew were thus not permitted to rely on section 1(1)(g) to claim loss of their baggage.

15 This view was also adopted by D R Thomas in *Maritime Liens* [Vol 14, British Shipping Laws at pg 110]. Quoting the decision in *The Eschersheim*, the author opined that paragraph (g) was confined to claims against the carrying ship and was designed to cover the claim of a cargo owner against the ship to which he had entrusted his cargo.

16 Insofar as "cargo" is concerned, the defendants' counsel submitted that the ordinary meaning of this word was "goods, property or merchandise carried by a vessel for the purpose of earning freight". In the present case, the seismic equipment was supplied to the vessel for the purpose of the vessel's operations in carrying out geophysical survey and was not loaded on board the vessel to be transported from one destination in order to be discharged at another. It thus did not come within the meaning of "goods carried as cargo".

17 In response, counsel for the plaintiffs maintained that since there was no local authority on the ambit of section 3(1)(g), it was open to this court to construe the paragraph in the widest possible way. It would not be inconsistent with the natural meaning of the word "goods" to hold that any chattel on board or any load of a vessel would suffice. Counsel ventured to add that *The Eschersheim* should only be read to mean that a distinction should be drawn between chattels on board a vessel belonging to a shipowner, his master and crew and those belonging to others.

18 I did not accept that the words "goods carried in a ship" had such a wide meaning as that prescribed by the plaintiffs' counsel. If these words could include any chattel as long as the chattel

was moveable and formed the load of a vessel, then surely any baggage on board a vessel would fall within the definition of these words. There would then be no need for section 2 of the Act to define and extend the word "goods" to include baggage. I decided that *The Eschersheim* was correct in that in the context of section 3(1)(g), "goods" carried in a ship referred to goods carried as cargo on board a ship, in other words, things or items carried on board a vessel for the purpose of being conveyed or transported from one place to another.

19 In the present case, the equipment was something the vessel was fitted out with in order to enable the vessel to carry out a specific type of work, geophysical survey works. The vessel was not carrying the equipment as cargo for the purpose of conveying or transporting the equipment from one venue to another. As such, following from my reasoning above, the equipment was not "goods carried in a ship" as contemplated by section 3(1)(g) of the Act. I agreed with the defendants that the admiralty jurisdiction of the court was wrongly invoked and for this reason, the writ of summons and the warrant of arrest had to be set aside.

20 Before I conclude, I should add that counsel for the plaintiffs had pointed out that at the hearing of the plaintiffs' application to offload the equipment whilst the vessel was under the earlier arrest (taken out by the charterers), the defendants had opposed the application on the grounds that they had a lien over the equipment. In other words, the defendants themselves had conceded that the equipment was "cargo" on board the vessel as only cargo could be the subject of a lien under the charterparty. At that hearing, the charterers took the position that the equipment was affixed to the vessel and could not be construed as cargo. In my view, the above was not of real assistance to the plaintiffs. I agreed with the defendants that the court had to look at the scope of section 3(1)(g) and consider whether the true nature of the equipment permitted it to fall within the paragraph, and not at the positions adopted by the parties at some other hearings.

Copyright © Government of Singapore.