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The definitive seaworthiness case

Alize 1954 and another c Allianz Elementar Verisherungs AG and others (2021) UKSC

This appeal in the Supreme Court concerned the scope of a shipowner's obligation to exercise due diligence to make a vessel seaworthy and in particular whether negligent passage planning might render a vessel unseaworthy or whether it was excepted as involving negligent navigation. The seaworthiness obligation is fundamental to all contracts of carriage of goods by sea.

The appellants were the owners of the container ship CMA CGM Libra. The respondents were cargo owners. This ship grounded on a shoal outside of the buoyed fairway shortly after leaving Xiamen, China en route to Hong Kong. An Admiralty Judge found that the vessel's defective passage plan was causative of the grounding and that this involved a breach of the carrier's seaworthiness obligation under Article III rule 1 of the Hague / Hague Visby Rules (Hague Rules). As this involved the owner's actionable fault it followed that the cargo owners had a good defence to the owner's claim in general average. His decision was upheld by the Court of Appeal. In this appeal, the owners contended that the vessel was not unseaworthy and/or due diligence was exercised and that any negligence in passage planning was a navigational fault which was exempted either under Article IV rule 2(a) of the Hague Rules or otherwise.

Unanimously dismissing the appeal, the Supreme Court held that there were two issues.

Issue 1: Did the defective passage plan render the vessel unseaworthy for the purpose of Article III rule 1 of the Hague Rules?

The owners had argued that the Hague Rules drew a category-based distinction between the vessel's quality of seaworthiness or navigability and the navigation of the vessel by the master and crew. The former concerned the carrier's duty to make the vessel seaworthy under Article III rule 1, whilst the latter was subject to the 'nautical fault' exception as set out in Article IV rule 2(a).

The court rejected the argument that there was a category-based distinction between the seaworthiness and the navigation or management of the ship. They were not mutually exclusive.

Negligent navigation or management of the ship can cause unseaworthiness. If it did so, then the negligence was likely to amount to a failure to exercise due diligence and the carrier would be liable for any resulting loss and damage. Further, if the vessel was unseaworthy then it could make no difference whether negligent navigation or management was the cause of the unseaworthiness or was itself the unseaworthiness. What mattered was the fact of the unseaworthiness. Causation was relevant to the issue of due diligence, but not whether the relevant defect or state of affairs amounted to unseaworthiness. That would depend on its effect on the fitness of the vessel to carry the goods safely on the contractual voyage.

The UKSC further rejected the owners' argument that there was an 'attributable threshold' whereby unseaworthiness required there to be an attribute of the vessel which threatened the safety of the vessel or her cargo. Seaworthiness was not limited to physical defects in the vessel and her equipment; it extended, for example, to documentary matters, to the knowledge and skill of the crew, to the vessel's systems and sometimes to the vessel's cargo or trading history. It was neither correct nor helpful to regard seaworthiness as subject to an 'attributable threshold'. This was best treated as an illustrative rather than prescriptive requirement.

The court confirmed that, save for exceptional cases at the boundaries of seaworthiness, the well-established prudent owner test, namely whether a prudent owner would have required the relevant defect to be made good before sending the vessel to sea had he known of it, was an appropriate test of seaworthiness, well suited to adapt to varied and changing standards. It further confirmed that the fact that a defect was remediable might mean that a vessel was not unseaworthy. This was likely to depend on whether it would reasonably be expected to be put right before any danger to vessel or cargo arose.

The court held that on the proper interpretation of the Hague Rules, the Article IV rule 2 'nautical exception', could not be relied on in relation to a causative breach of the carrier's obligation to exercise due diligence to make the vessel seaworthy. The fact that the defective passage plan involved 'neglect or default' in the 'navigation of the ship' within the Article IV rule 2(a) exception was no defence to a claim for loss and damage caused by unseaworthiness. Given the 'essential importance' of passage planning for the 'safety…of navigation', applying the prudent owner test, a vessel was likely to be unseaworthy if she began her voyage without a passage plan or if she did so with a defective passage plan which endangered the safety of the vessel.

Issue 2: Did the failure of the master and second officer to exercise reasonable skill and care when preparing the passage plan constitute want of due diligence on the part of the carrier for the purpose of Article III rule 2 of the Hague Rules?

The owners' alternative case was that, so long as the carrier had equipped the vessel with all that was necessary for her to be safely navigated including a competent crew, the crew's failure to navigate the ship was not a lack of due diligence by the carrier. It was outside the carrier's orbit of responsibility.

The UKSC held that the obligation on the carrier to exercise due diligence to make the vessel seaworthy required that due diligence was exercised in the work of making the vessel seaworthy, regardless of who was engaged to carry out that task. The carrier might not be liable for lack of due diligence which occurred before he had responsibility for the vessel or in relation to the cargo, before he had responsibility for the cargo. The carrier might nevertheless be liable if the defect or danger would be reasonably discoverable by the exercise of due diligence once the vessel or cargo had come within its control.

The carrier was liable for a failure to exercise due diligence by the master and deck officers of his vessel in the preparation of the passage plan for the vessel's voyage. That navigation was the responsibility of the master and the fact that it involved the exercise by the master and deck officers of their specialist skill and judgment made no difference. The court emphasised the non-delegable duty on the carrier under Article III. The carrier's seaworthiness obligation in relation to passage planning was not limited to providing a proper system for such planning. If the causative negligence consisted of passage planning errors at the appraisal or planning stage and rendered the vessel unseaworthy before and at the beginning of the voyage then the carrier would be liable regardless of whether it had proper systems for passage planning and crew competence.

Charles Patterson, Legal Director at **Thomas Miller Law** and a member of the Marine SFT comments:

The full case report is at: Alize 1954 & Anor v Allianz Elementar Versicherungs AG & Ors [2021] UKSC 51 (10 November 2021) (bailii.org)