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Marine Claims: Limitation



IN BRIEF

The Court of Appeal held that a charterer (who fell within the extended definition of "shipowner" in Article 1 of the 1976 Convention on Limitation of Liability for Marine Claims) could not limit its liability to the actual owner in respect of losses suffered by (and only by) the actual owner.

MSC Mediterranean Shipping Company S.A. v Stolt Tank Containers B.V, and others (2023) EWCA Civ 1007

This was a case about tonnage limitation under the 1976 Convention on Limitation of Liability for Maritime Claims. The claimant/appellant ("MSC"), the time charterer of the ship "MSC Flaminia", sought an order that it was entitled to limit its liability to the 4th defendant/respondent ("Conti"), the owner of the ship, arising out of an explosion that took place in July 2012.

An Admiralty judge held that MSC was not entitled to limit its liability because Conti's claims were not within the scope of Article 2 of the Convention. MSC appealed, but only in relation to some of Conti's claims. Conti supported the judge's reasoning, but contended in addition, by a respondent's notice, that a charterer (who fell within the extended definition of "shipowner" in Article 1 of the Convention) could not limit its liability to the actual owner in respect of losses suffered by (and only by) the actual owner.

The "MSC Flaminia" was a container ship. MSC was a large container transportation business which was the time charterer of the ship. Conti, the owner of the ship, was a one ship special purpose vehicle. MSC had chartered the ship from Conti under a time charter initially made in November 2000 and subsequently extended several times.

On 14th July 2012, while the ship was in mid-Atlantic an explosion occurred in the no. 4 cargo hold which led to a large fire on board. Hundreds of containers were destroyed and extensive damage was caused to the ship. Three crew members lost their lives. The explosion was caused by the auto-

polymerisation of the contents of one or more of three tank containers laden with a chemical known as DVB which had been shipped at New Orleans on 1st July 2012.

Conti engaged salvors to bring the fire under control and to salvage the ship and cargo. The salvors did this by spraying seawater into the ship, one result of which was that about 30,000 mt of firefighting water, contaminated with dangerous and toxic residues, remained in the holds after the fire was brought under control. The salvors then towed the ship through the English Channel to Wilhelmshaven in Germany, which was the only available port of refuge, arriving on 9th September 2012. This passage required Conti to make payments totalling about €1.9 million to public authorities in the United Kingdom, France, Belgium and Germany to pay for the cost of measures taken to guard against the risk of pollution from bunkers leaking from the ship.

Because the ship was unable to complete the voyage to Antwerp, Conti arranged to discharge the cargo at Wilhelmshaven. This involved the discharge and decontamination of undamaged and salvageable cargo and the destruction of unsalvageable cargo. The discharge at Wilhelmshaven was completed on 18th December 2012, but the processes of decontaminating the cargo, releasing sound cargo to the cargo interests and destroying unsound cargo continued during and even after 2013. Conti paid for these operations, the total cost of which was about €38 million. Also at Wilhelmshaven, Conti engaged contractors to decontaminate and remove the firefighting water from the ship's holds. By 28th February 2013 about 30,000 mt had been removed into barges, from where it was taken to Denmark and destroyed. The cost of removing this firefighting water was about €7.1 million.

After the discharge of the majority of the firefighting water, there remained on board the ship approximately 30,500 mt of waste material, consisting of approximately 14,800 mt of fire-damaged solid cargo (i.e., the contents of the containers), 7,800 mt of contaminated water, and 5,400 mt of steel scrap. Most of this steel scrap consisted of damaged cargo containers, but there was also fire-damaged structural steel from the ship. All of this waste material was contaminated by dangerous and toxic residues which needed to be removed before repairs to the ship could be carried out. Conti arranged for this waste to be removed at facilities in Romania. On 15th March 2013 the ship left Wilhelmshaven, arriving on 30th March 2013 but only berthing on 17th May. Even then, discharge did not begin until 27th July. Between then and 16th October 2013 a total of 2,155 mt of steel scrap was removed from the ship, but progress was slow and unsatisfactory, as a result of which Conti decided that the ship should proceed to Denmark for the discharge of the remaining waste material. The ship arrived at Aarhus in Denmark on 22nd November 2013 and a total of approximately 28,400 mt of waste material was removed there and subsequently at Odense. This work was completed on 1st February 2014. The total cost of these operations was about €24.8 million.

After the waste removal was completed, the ship left Odense for Mangalia in Romania where repairs were carried out between 17th February and 12th July 2014 at a cost of approximately US \$21 million. The ship then returned to service under the time charter.

In addition, Conti incurred various miscellaneous expenses while dealing with the consequences of the casualty, which totalled about €23 million.

The casualty gave rise to a number of cargo claims brought in the United States District Court for the Southern District of New York against MSC (the bills of lading being charterer's bills), Conti and others, including Stolt-Nielsen USA Inc and Stolt Tank Containers BV (together "Stolt"), the shippers

of the DVB, and Deltech Corp, its manufacturer. The District Court found that Stolt and Deltech alone were liable to the cargo claimants, that the claims against MSC and Conti failed, and that MSC and Conti were entitled to a full indemnity from Stolt and Deltech against any other claims by cargo claimants. An appeal by Stolt and Deltech was dismissed by the Court of Appeals for the Second Circuit in a judgment handed down on 30th June 2023.

The time charter between Conti and MSC contained an arbitration clause. Conti brought claims in arbitration to recover hire throughout the period while the ship was out of service under the charter and to recover its losses as a result of the casualty. The arbitrators determined that the ship remained on hire throughout and that MSC was liable to Conti in respect of the casualty. By an award dated 30th July 2021 and corrected on 1st September 2021, they awarded damages of approximately US \$200 million.

On these facts a High Court Judge (the judge) held that MSC was not entitled to limit its liability because Conti's claims were not within the scope of any of the paragraphs of Article 2.

MSC advanced four grounds of appeal, as follows:

(1) The judge was wrong to hold that claims as between owner and charterer regarding responsibility *inter se* for the cost of removing cargo from the ship did not fall within Article 2.1(e) of the Convention; he should have held that the cost of removing the cargo from the ship and decontaminating it fell within Article 2.1(e).

(2) The judge was wrong to interpret Article 2.1(f) as encompassing only "claims ... in respect of measures *solely* taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention"; he should have held that the payments to national authorities and the costs of removing firefighting water from the holds were incurred in part in order to avert or minimise loss of or damage to the cargo and therefore fell within Article 2.1(f).

(3) The judge was wrong to hold that MSC's liability to Conti was a single claim in respect of damage to the ship, as opposed to a group of claims, some of which were limitable and some of which were not; the correct approach is to consider whether each particular head of loss does or does not come within one of the paragraphs of Article 2.1.

(4) The judge was wrong to hold that none of Conti's claims were in respect of consequential loss resulting from loss of or damage to property occurring on board the ship for the purpose of Article 2.1(a); he should have held that each of Conti's claims for (a) the payments to national authorities, (b) the cost of discharging the cargo, (c) the removal and disposal of the firefighting water, and (d) the removal of the cargo waste, was a claim for losses "consequential" on damage to the cargo on board.

The Court of Appeal held that the correct approach to the interpretation of an international Convention was now well established. It must be interpreted by reference to broad and generally accepted principles of interpretation, in particular as set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969.

The respondent's notice submitted that a charterer could limit its liability in respect of, and only in respect of, liabilities that originated outside the group of entities that were defined as "shipowners" for the purposes of limitation, identified in Article 1.2 of the Convention. This submission was taken first because, if it was right, it provided a complete answer to the appeal.

The respondent submitted that the claims referred to in Article 2 must be interpreted to exclude claims by an owner against a charterer to recover losses suffered by the owner itself. The Court of Appeal accepted this submission. All of the judges who had had to consider the 1976 Convention had regarded the provisions of Articles 9 to 11 as of critical importance in ascertaining how it should be interpreted. It was difficult to see how a charterer could claim the benefit of limitation through a fund intended to cover both owner and charterer when a claim was brought against the charterer by the owner.

There was nothing in the 1976 Convention to suggest that it was intended either to bring about a radical extension of the circumstances in which a charterer had a right to limit.

Accordingly, this court dismissed the appeal by reference to the respondent's notice, although the court went on to discuss each of the appellant's grounds of appeal.

The full judgment may be found at: [MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV & Ors \(Re "MSC Flaminia" \(No. 2\)\) \[2023\] EWCA Civ 1007 \(01 September 2023\) \(bailii.org\)](#)

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