10 November 2021

PRESS SUMMARY

Alize 1954 and another (Appellants) v Allianz Elementar Versicherungs AG and others (Respondents)
[2021] UKSC 51
On appeal from: [2020] EWCA Civ 293

JUSTICES: Lord Reed (President), Lord Briggs, Lady Arden, Lord Hamblen, Lord Leggatt

BACKGROUND TO THE APPEAL

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

The appellants are the owners of the container ship CMA CGM LIBRA. The respondents are cargo owners. The ship grounded on a shoal outside of the buoyed fairway shortly after leaving Xiamen, China en route to Hong Kong. The Admiralty judge, Teare J, 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 Rules. As this involved the owners' actionable fault it followed that the cargo owners had a good defence to the owners' claim in general average. His decision was upheld by the Court of Appeal. The owners contend that the decisions of the courts below were wrong, that the vessel was not unseaworthy and/or due diligence was exercised, and that any negligence in passage planning was a navigational fault which is exempted under article IV rule 2(a) of the Hague Rules.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Hamblen gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

<u>Issue 1: Did the defective passage plan render the vessel unseaworthy for the purposes of article III rule 1 of the Hague Rules?</u>

The owners argued that the Hague Rules draw 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 concerns the carrier's duty to make the vessel seaworthy under article III rule 1, whilst the latter is subject to the 'nautical fault' exception as set out in article IV rule 2(a) **[44]-[57]**.

The Court rejects the argument that there is a category-based distinction between the seaworthiness and the navigation or management of the ship. They are not mutually exclusive. Negligent navigation or management of the ship may cause unseaworthiness. If it does so, then that negligence is likely to amount to a failure to exercise due diligence and the carrier will be liable for any resulting loss and damage. Further, if the vessel is unseaworthy then it can make no difference whether negligent navigation or management is the cause of the unseaworthiness or is itself the

unseaworthiness. What matters is the fact of unseaworthiness. Causation is relevant to the issue of due diligence, but not to whether the relevant defect or state of affairs amounts to unseaworthiness. That will depend on its effect on the fitness of the vessel to carry the goods safely on the contractual voyage **[60]-[71], [85], [121]**.

The Court further rejects the owners' argument that there is an "attribute threshold" whereby unseaworthiness requires there to be an attribute of the vessel which threatens the safety of the vessel or her cargo **[56]**. Seaworthiness is not limited to physical defects in the vessel and her equipment; it extends, 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 is neither correct nor helpful to regard unseaworthiness as subject to an "attribute threshold. This is best treated as an illustrative rather than a prescriptive requirement **[86]-[96], [122]**.

The Court confirms 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, is an appropriate test of seaworthiness, well suited to adapt to differing and changing standards **[97]-[101]**. It further confirms that the fact that a defect is remediable may mean that a vessel is not unseaworthy. This is likely to depend on whether it would reasonably be expected to be put right before any danger to vessel or cargo arose **[102]-[103]**.

The Court holds that on the proper interpretation of the Hague Rules, the article IV rule 2 'nautical fault' exception cannot be relied upon in relation to a causative breach of the carrier's obligation to exercise due diligence to make the vessel seaworthy **[70]-[76], [83]-[84], [119]**. The fact that the defective passage plan involves "neglect or default" in "the navigation of the ship" within the article IV rule 2(a) exception is no defence to a claim for loss or damage caused by unseaworthiness **[118]-[119**]. Given the "essential importance" of passage planning for the "safety … of navigation", applying the prudent owner test, a vessel is likely to be unseaworthy if she begins her voyage without a passage plan or if she does so with a defective passage plan which endangers the safety of the vessel **[124]-[128]**.

<u>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 purposes of article III rule 2 of the Hague Rules?</u>

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

The Court holds that the obligation on the carrier to exercise due diligence to make the vessel seaworthy requires that due diligence be exercised in the work of making the vessel seaworthy, regardless of who is engaged to carry out that task **[133]-[134]**. The carrier may not be liable for lack of due diligence which occurs before he has responsibility for the vessel or, in relation to cargo, before he has responsibility for the cargo. The carrier may nevertheless be liable if the defect or danger would be reasonably discoverable by the exercise of due diligence once the vessel or cargo has come within its control **[135]-[136]**.

The carrier is liable for a failure to exercise due diligence by the master and deck officers of his vessel in the preparation of a passage plan for the vessel's voyage. That navigation is the responsibility of the master and the fact that it involves the exercise by the master and deck officers of their specialist skill and judgment makes no difference **[137]-[139]**. The carrier's seaworthiness obligation in relation to passage planning is 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 **[141]-[143]**.

References in square brackets are to paragraphs in the judgment

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html