When can a Marina limit its liability?

Holyhead Marina v Peter Farrer [2020] EWHC 1750 (Admlty)

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In his judgment in ***Holyhead Marina v Peter Farrer*** [2020] EWHC 1750 (Admlty), handed down today, Mr Justice Teare considers the circumstances in which the owners of a dock or marina can limit their liability for damage to ships and other property. Benjamin Coffer appeared for the Claimant, instructed by Emma Rice of Clyde & Co.

The decision concerns section 191 of the Merchant Shipping Act 1995. Section 191 grants "the owners of any dock or canal" a right to limit their liability which is similar to the right of a shipowner under the 1976 Limitation Convention. The liability of the dock or canal owner is limited by reference to the tonnage of the largest UK ship which has been within "the area over which the authority or person discharges any functions" at any time within the last five years. "Dock" is given a wide meaning by section 191(9) to include "wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties."

The right to limit under section 191 can be lost in the same way as the shipowner's right to limit under the 1976 Convention. Section 191(4) applies Article 4 of the 1976 Convention, which provides that a person will lose the right to limit where "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". As was common ground before the Judge, the knowledge referred to in Article 4 is actual knowledge: what is required is "actual knowledge, in the sense of, appreciation or awareness at the time of the conduct in question, that it will probably result in the type of damage caused. Nothing less will do."

The Claimant was the manager and operator of Holyhead Marina. On 1 and 2 March 2018, a severe storm known as 'Storm Emma' caused very substantial damage to the Marina, including the break-up and detachment of the floating elements of the Marina itself. The storm, and the resulting break-up of the Marina, caused loss and damage to a number of yachts and other ships which were present in and around the Marina at the time. The owners of the Marina sought a general decree that they were entitled to limit their liability by reference to the tonnage of the largest UK ship to have been within the Marina in the preceding 5 years.

The Defendants were the owners of yachts which were damaged by Storm Emma. They resisted the right to limit, on three grounds. First, they argued that the Marina was not a "dock" for the purposes of section 191 and that the Claimant was therefore not entitled to the benefit of the section. Second, they argued that the Claimant was deprived of the right to limit under Article 4 on the basis that the loss or damage had been caused by the Claimant's reckless act or omission with knowledge that such loss would probably result. The Defendants alleged recklessness in connection with the design, construction and management of the Marina, and argued that the required degree of knowledge and foresight could be inferred from the reckless nature of the acts and omissions. Finally, the Defendants argued that "the area over which [the Claimant] discharges any functions" was not just the Marina itself but extended to the whole of Holyhead Harbour, so that the limitation amount should be calculated by reference to large passenger ferries which had called at the ferry terminal.

The Claimant applied for strike-out and/or summary judgment.

Mr Justice Teare accepted that although the Marina was not a "dock" on the natural meaning of that word, the floating pontoons which comprised the Marina could properly be described as a landing place, jetty or stage (but not a "pier"). He rejected the Defendants' argument that section 191 was only available to the owners of structures used for commercial ships. The purpose of section 191 (and its statutory predecessor, section 2(4) of the Merchant Shipping (Liability of Shipowners and others) Act 1900) was to extend the limitation regime to shore side structures.

The Judge also agreed with the Claimant that "the area over which [the Claimant] discharges any functions" was the Marina. Although he accepted the Defendants' argument that one of the Claimant's "functions" was to ensure that users of the Marina complied with harbor regulations and bye-laws throughout the area of the harbour, he agreed that the area over which that function was discharged by the Claimant was the Marina itself: that was the only area of water over which the Claimant exercised any control or authority.

However, the Judge declined to strike-out the Defendants' reliance on Article 4. Although the Judge viewed the allegations in the Defence as "weak and implausible" and "most improbable", and expressed the view that they would "very probably

fail", he was not prepared to dismiss the defence summarily. The Defendants' allegations were just about arguable, and raised factual issues which would have to be determined at trial. The Judge did, however, accept the Claimant's alternative submission that leave to defend should be conditional on the Defendants making a payment into court to stand as security for the Claimant's costs of the Article 4 defence.

The Atlantik Confidence [2016] 2 Lloyd's Rep 525 remains the only case in which Article 4 has been established at trial.

Benjamin Coffer

"He is very calm and professional in his assessment, which conveys confidence and gravitas beyond his call."(Chambers UK, 2020)

Ben was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted for Shipping Junior of the Year for the Legal 500 UK Awards 2020. He is described by the directories as "a rising star" (Legal 500, 2019); "a standout shipping and commodities junior" (Chambers & Partners, 2018) and "a star of the future" (Chambers & Partners, 2017). He is also recognised as a leading junior in the Legal 500 Asia Pacific Guide.

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