Pan-United Shipyard Pte Ltd v India International Insurance Pte Ltd
[2000] SGHC 14

Case Number : OS 137/1998
Decision Date : 26 January 2000
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Goh Joon Seng J
Counsel Name(s) : Navinder Singh (Joseph Tan Jude Benny) for the plaintiffs; Jainil Bhandari (Khattar Wong & Partners) for the defendants
Parties : Pan-United Shipyard Pte Ltd — India International Insurance Pte Ltd

JUDGMENT:

GROUNDS OF JUDGMENT

The parties

1 The Plaintiffs are shipbuilders and repairers. Their yard is situated at 33 Tuas Crescent, Singapore. The Defendants are authorised insurers under the Insurance Act (Cap 142).

The background

2 On 22 January 1992, the Plaintiffs entered into a contract with Ranger Shipping Pte Ltd to convert a bulk carrier the Ikopa ('the Vessel') to a clean product tanker. The scope of works included and required grit blasting and spray painting.

3 For the purpose of securing protection and indemnity against, inter alia, their liability arising from any accident or occurrence, the Plaintiffs under the advice of their brokers Frank B Hall Insurance Brokers (S) Pte Ltd obtained from the Defendants, a Collective Policy of Insurance ('the Collective Policy'). The insureds were described as 'Pan-United Shipyard Pte Ltd and/or Petro Ships Pte Ltd and/or Ranger Shipping Pte Ltd and/or Asian Lift Pte Ltd for their respective rights and interest.' The relevant clauses are clauses 19 and 10.1. They read:

> "19.1 The Underwriters agree to indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, as Owner of the Vessel, for any claim, demand, damages and/or expenses, where such liability is in consequence of any of the following matters or things and arises from an accident or occurrence during the period of this insurance:
>
> [underlining added]
>
> > 19.1.1 loss of or damage to any fixed or movable object or property or other thing or interest whatsoever, other than the Vessel, arising from any cause whatsoever in so far as such loss or damage is not covered by Clause 17 [clause 17 refers to liability

of the Assured arising from collision involving the Vessel]

19.1.2 any attempted or actual raising, removal or destruction of any fixed or movable object or property or other thing, including the wreck of the Vessel, or any neglect or failure to raise, remove, or destroy the same

19.1.3 liability assumed by the Assured under contracts of customary towage for the purpose of entering or leaving port or maneuvering within the port

19.1.4 loss of life, personal injury, illness or payments made for life salvage.

19.2 The Underwriters agree to indemnify the Assured for any of the following arising from an accident or occurrence during the period of this insurance:

19.2.1 the additional cost of fuel, insurance, wages, stores, provisions and port charges reasonably incurred solely for the purpose of landing from the Vessel sick or injured persons or stowaways, refugees, or persons saved at sea

19.2.2 additional expenses brought about by the outbreak of infectious disease on board the Vessel or ashore

19.2.3 fines imposed on the Vessel, on the Assured, or on any Master Officer crew member or agent of the Vessel who is reimbursed by the Assured, for any act or neglect or breach of any statute or regulation relating to the operation of the Vessel, provided that the Underwriters shall not be liable to indemnify the Assured for any fines which result from any act neglect failure or default of the Assured their agents or servants other than Master Officer or crew member

19.2.4 the expenses of the removal of the wreck of the Vessel from any place owned, leased or occupied by the

Assured

19.2.5 legal costs incurred by the Assured, or which the Assured may be compelled to pay, in avoiding, minimizing or contesting liability with the prior written consent of the Underwriters.

DEDUCTIBLE

10.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under clauses … 19 … exceeds _____ in which case this sum shall be deducted."

This clause is to be read with the schedule which provided:

"Deductible, Clause 10 – S$50,000.00 All claims Each Accident."

4 The conversion work to the Vessel was carried out during the period February 1992 to January 1993. Grit blasting and spray painting were carried out. At the material time, a yacht, the El Corsario was undergoing warranty and docking works at a neighbouring shipyard at No 29, Tuas Crescent, Singapore.

5 In June 1995, the Plaintiffs received a claim from the owners of the El Corsario for damage allegedly caused by the grit blasting and spray painting works carried out by the Plaintiffs on the Vessel.

6 The Plaintiffs referred the claim to the Defendants. On 4 October 1995, the Defendants denied liability principally on the ground that the claim was not being brought against the Plaintiffs as the owner but as the repairer of the Vessel. Consequently the Plaintiffs were not entitled to be indemnified under Clause 19.

7 On 31 August 1996, the owners of El Corsario commenced proceedings in Suit 1627 of 1996 against the Plaintiffs and the neighbouring shipyard Kvaerner Fjellstrand (S) Pte Ltd.

8 As liability to indemnify the Plaintiffs had been denied by the Defendants, the Plaintiffs conducted their own defence through their own solicitors.

9 Pending the hearing of Suit 1627 of 1996, the Plaintiffs on 6 February 1998 filed these proceedings for, inter alia, a declaration that in the event that they were held liable for the claim made by the owners of the El Corsario, they were entitled to be indemnified by the Defendants under clause 19 of the Collective Policy in respect of the said claim including all interest and costs.

10 Eventually, the claim in Suit 1627 of 1996 was settled on 25 August 1998 when, by consent, the claim was dismissed with no order as to costs.

11 On 1 March 1999, the Plaintiffs amended their claim herein to one for declaration, inter alia, that they 'be entitled to be indemnified by the Defendants for their legal costs incurred in defending Suit 1627 of 1996 pursuant to Clause 19' of the Collective Policy. The amount claimed is $146,193.96.

12 These proceedings came up for hearing before me. I dismissed the Plaintiffs' claim. The Plaintiffs have appealed to the Court of Appeal. I now give my reasons.

13 Clause 19.1 provides that the Defendants shall indemnify the Plaintiffs as the Assured in respect of 'any sum or sums paid by Assured to any person or persons by reason of the Assured becoming legally liable, as Owner of the Vessel…' It is thus quite clear that the indemnity provided is against liability incurred by the Assured as 'Owner' of the Vessel. The other sub-clauses of clause 19 also relate to liability of shipowners or persons in possession of a ship as owners or as operators.

14 In *Rigby & Ano. v Sun Alliance & London Insurance Ltd* [1980] 1 Lloyd's Law Reports 359, a policy on buildings contained an 'Additional protection' clause reading:

> "*Additional protection:* … the Company will pay to the Insured… (13) the amount of claimant's damages (including costs and expenses) arising out of the Insured's liability at law attaching solely as owner, not occupier, of the house in respect of (a) accidental bodily injury (including death or illness) to any person, or (b) accidental damage (including loss) to property happening in or about the house during any period of insurance."

14.1 The issue before the court was whether that clause would indemnify the insured against claims by their neighbours for damage to the latter's property allegedly caused by encroachment of the roots of oak trees on the insured's property. The claim was based on the tort of nuisance which is concerned with the wrongful use of land by a defendant who may or may not be the owner. In holding that the claims were not within the scope of the policy, Mustill J stated at p 364:

> "The liability must attach to the insured "as owner". These words are apt to describe not the capacity of the insured or the history of the liability, but the character of the liability itself. To my mind they denote that the status of the insured as owner is an integral part of the cause of action against him, and not merely that in practice he would never have found himself in the position of receiving a claim and being held liable if he had not been the owner of the premises. This view corresponds with the opinions expressed on a very similar point by Mr. Justice McNair and Lord Justice Diplock delivering the judgment of the Court of Appeal in *Sturge v. Hackett,* [1962] 1 Lloyd's Rep. 117, at p. 124, and [1962] 1 W.L.R. 1257."

15 In *Sturge v Hackett* [1962] 1 Lloyd's List Law Reports 117, the defendant obtained a policy of insurance covering his liability as 'occupier' of a flat in a house up to 100,000 and his personal liability for negligence up to 10,000. The house was destroyed by fire resulting from the defendant's efforts to burn a birds' nest under the eaves of the house while standing on the balcony which he was permitted to use. The owner of the house brought an action against the defendant for 50,000. The insurer brought an action for declaration that his liability under the policy was limited to 10,000 under the personal negligence clause. In granting the declaration, McNair J stated at p 124:

> "In my judgment, the phrase "All sums for which the Assured (as occupier…) may be held legally liable" in the section of the policy headed "Liability to the Public" clearly relates, and relates only, to a well-defined group of liabilities imposed upon occupiers of premises. The words "as occupier" connote that occupation is an essential ingredient of the liability and are not merely descriptive of the identity or status of the person to whom liability attaches."

15.1 The defendant appealed. Though the appeal was allowed by the Court of Appeal, Diplock LJ upheld McNair J's construction of the words 'as occupier':

> "In our view, the learned Judge was right in law in holding that the question whether Colonel Hackett's liability falls within the occupier's liability clause depends upon whether the fire that caused the damage started upon premises of which he was the occupier."
>
> See *Sturge v Hackett* [1962] 1 Lloyd's List Law Reports 626 at 631.

16 My attention was drawn to the decision in *Chrismas v Taylor Woodrow Civil Engineering Ltd and Sir Robert McAlpine Ltd* [1997] 1 Lloyd's Law Reports 407. That case concerned a floating platform which could be moved though not under its own power. It could also be jacked up on legs which rested on the seabed with the platform itself raised above the level of the water. The platform was owned by the first defendants and was at the time on demise charter to the second defendants.

16.1 The platform was insured with the plaintiff. The policy named the assured as Taylor Woodrow Plc, including charterers. The plaintiff accepted that the second defendant was an assured under the policy.

16.2 The policy conditions incorporated the Institute Time Clauses Hulls Port Risks which provided, inter alia, that '[t]he Underwriters agree to indemnify the Assured for any sum paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, as owner of the Vessel, for any claim, demand, damages and/or expenses, where such liability is in consequence of any of the following matters … [par. 4] Including cover in respect of liability arising out of goods … being lifted and/or transported mechanically or otherwise by the insured equipment and/or craft for the purpose of any contract for works or otherwise.'

16.3 The second defendant was using the platform as a platform for a crane which it employed in work for a water authority. There was a provision in the contract between the water authority and the second defendant that on completion of the works the second defendant should clear away and remove from the site all constructional plant plus material, rubbish and temporary works of every kind and leave the whole of the site and permanent works clean and in a workmanlike condition.

16.4 While the platform was jacked up it was struck by an exceptionally large wave which lifted it off its legs. The crane fell off the platform and sank. The second defendant incurred substantial expense in removing the crane from the seabed and sought to recover such expenses from the insurers under the policy.

16.5 Judge Kershaw held that though the second defendant were charterers and not owners, they were entitled to be indemnified under the policy in respect of their expenses in removing the crane from the seabed. In delivering his judgment, the learned judge stated at p 411:

> "I have reached the conclusion that the fourth paragraph of the condition does apply only to liabilities which would be covered by the Institute Times Clauses and that it is a requirement of cover under the fourth paragraph that it should be by reason of the assured becoming legally liable, … the second defendant would be insured, by reason of the fourth paragraph, against liabilities which fall upon the second defendant, in the sense that they would have fallen upon the first defendant as owner but instead fall upon the second defendant under a demise charter. …

> … I have reached the conclusion that the second defendant became liable to remove the crane from the seabed not in any way as charterer or because it was a charterer by demise and an owner would have been liable, but purely and simply and solely because of its contractual obligation to the water authority."

17 Relying on *Chrismas v Taylor Woodrow* and the description of the four named insureds in the Collective Policy containing the words 'for their respective rights and interest' the Plaintiffs contended that they, as ship repairers, were entitled to be indemnified in respect of the claim brought by the owners of the El Corsario. They also contended that as the Defendants had wrongfully repudiated liability to indemnify them under the Collective Policy, they took steps to defend the claim as a prudent uninsured. The defence resulted in the claim against them being withdrawn. But the Plaintiffs incurred costs as between solicitor and client in defending the said claim for which they should be reimbursed.

My decision

18 In my view, *Chrismas v Taylor Woodrow* turned on the special wording of sub-paragraph 4 of the policy. This sub-paragraph is not in the Collective Policy. Accordingly, the case is of no assistance. The Collective Policy only covered the Plaintiffs' liability as owner and not as repairers of the Vessel. Accordingly, I dismissed the Plaintiffs' claim with costs. I would also add that if the Plaintiffs as ship repairers are covered under the terms of the Collective Policy, their claim will still be subject to a deductible of $50,000 under clause 10.

GOH JOON SENG

JUDGE

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