IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 251

Suit No 702 of 1995

Between

Transglobal Shipping Pte Ltd

… Plaintiff

And

Hyundai Engineering &
Construction Co Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Transglobal Shipping Pte Ltd v Hyundai Engineering & Construction Co Ltd

[1997] SGHC 251

Suit No 702 of 1995
Kan Ting Chiu J
08 October 1997

Judgment:

1. The issue under consideration is the circumstances in which a court should make a summary determination on a question of law under Order 14 rule 12 of the Rules of Court 1996. The Plaintiffs had applied for a question of law to be determined, but the Assistant Registrar who heard their application declined to make the determination. The Plaintiffs appealed against her decision. I heard the appeal and affirmed the decision. Now the Plaintiffs are bringing the matter to the Court of Appeal.

2. The Plaintiffs are the owners of the vessel "Goldensari Indah" and the Defendants are the owners of the tug "Hyundai HT 3012" and the barge "CP 2500". On 2 June 1994 the three vessels were involved in collisions off the coast of Singapore. While the tug was pushing the barge the Plaintiffs regarded that as one collision involving the three vessels, while the Defendants saw it as two distinct, albeit connected, collisions. The Plaintiffs in their Statement of Claim said that "a collision took place involving the Plaintiffs' and the Defendants' vessels." The Defendant in their Defence and Counterclaim pleaded that

(T)he starboard bow of the "Goldensari Indah" made contact with the starboard quarter of "Hyundai HT-3012" and the force of the contact pushed the "Hyundai HT-3012" forward and her bow came into contact with the stern of the unmanned dumb barge, "CP 2500"

3. Though the Defendants alluded that there was no contact between the "Goldensari Indah" and the barge "CP 2500", the Plaintiffs did not refer to this in their Reply and Defence to Counterclaim, and must be taken to join issue on this with the Defendants.

4. The Plaintiffs alleged that the Defendants had admitted that they are 70% to blame and the Plaintiffs are 30% to blame. This was specifically denied by the Defendants, who in their counterclaim sought a declaration that the "Goldensari Indah" was 30% to blame and the "Hyundai HT-3012" was 70% to blame, thereby implying that no blame was attributable to the barge.

5. The Defendants also pleaded that the barge "CP 2500" was an unmanned dumb barge and that it was not to be blamed for the collision involving the "Goldensari Indah". The Plaintiffs, however did not admit that the navigation control of the barge was charged to the tug and asserted that both the tug and the barge were to blame.

6. From the foregoing, any agreement between the parties is really quite limited. The parties take different positions on whether there was one or two collisions, they do not agree over whether the navigation and control of the barge was charged to the tug, and whether the barge had collided with the "Goldensari Indah".

7. Against this background, the Plaintiffs applied that

That the Court determine the following Question of law:-

Whether the applicable Limitation tonnage is that of the "Hyundai HT-3012" alone or the aggregated tonnages of the "Hyundai HT-3012" and "CP 2500".

8. The limitation tonnage mentioned refers to s 272(1)(d) of the Merchant Shipping Act, Cap 179 which was in force at the time of the application, and is now s 136(1)(d) of the Merchant Shipping Act 1995. The provision reads

The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:

...

(d) where any loss or damage is caused to any property (other than any property mentioned in paragraph (b)) or any right is infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship,

be liable to damages beyond the following amounts:

...

(ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether there is loss of life or personal injury or not, an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship’s tonnage:

9. Order 14 r 12(1) of the Rules of Court 1996 provides that

The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination *without a full trial* of the action; and

(b) such determination will *fully determine* (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(Emphasis added)

10. Two conditions have to be satisfied before a question can be summarily determined, the first relating to the nature of the question to be determined, and the second regarding the effect that the determination of the question would have on the case. By the first requirement, the question must be such that the answer is directly applicable to the resolution of the dispute before the court, with no other matters to be determined. By the second requirement, the answer to the question must dispose of the whole dispute between the parties - the rule does not permit parties to have some questions determined summarily while other issues of fact or law are reserved for determination at trial.

11. The Plaintiffs wanted the tonnage limitation to be determined summarily because they took the view that the Defendants' limitation tonnage should be the combined tonnage of the tug and the barge, whereas the Defendants contended that only the tonnage of the tug is applicable.

12. The parties referred to English decisions to support their positions. The two principal decisions are *The Bramley Moore* [1964] P 200, a decision of the Court of Appeal and *The Sir Joseph Rawlinson* [1973] 1 QB 85, a decision of the High Court. Both decisions dealt with the application of s 503(1) of the English Merchant Shipping Act, 1894 (the English equivalent to our limitation provisions) in situations where a tug-and-barge(s) is involved in a collision.

13. The "Bramley Moore", a tug, was towing two barges the "Buckwheat" and the "Millet" along the River Mersey. While sailing in that formation the "Millet" collided with another vessel the "Egret", and sand. In an action by the owners of the "Millet", the "Bramley Moore" and the "Egret" were found equally to blame. The owners of the "Bramley Moore" then took a limitation action against the owners of the "Millet" and the "Egret" to determine whether the tonnage limit of their liability should be calculated by reference to the tonnage of the tug alone or to the combined tonnage of the tug and one or both barges.

14. The High Court ruled that only the tonnage of the tug should be taken into consideration. The matter went on appeal to the Court of Appeal where Lord Denning said at pages 216-7

It can well be said that the owners of the tug were guilty of "improper navigation" of the barge - in that they were in control of the movement of the barge through the water. But the section requires you also to look at the cause of the damage. That is clear from the words "by reason of". And *in a case where those on the tug are negligent, and those on the barge are not, the cause of the damage is in truth the improper navigation of the tug, not the improper navigation of the barge. It is the tug which is the cause of all the trouble.*

(Emphasis added)

and continued at page 218 that

If those on board the tug are negligent and those on board the tow are not, and the tow comes into collision with another vessel, then clearly the damage is caused through an "act or omission of any person on board the tug."

15. In *The Sir Joseph Rawlinson* the vessel "Sir Joseph Rawlinson" was sailing along the Thames Estuary. Sailing in the opposite direction was the tug "Danube VIII" with a dumb barge the "Black Deep" in tow. As they met, there was a glancing contact between the "Danube VIII" and the "Sir Joseph Rawlinson", followed by a severe contact between the barge "Black Deep" and the Sir Joseph Rawlinson", which caused the latter to sink.

16. Liability for the collision was apportioned at two-thirds for the "Sir Joseph Rawlinson" and one-third for the "Danube VII", with no fault on the part of the "Black Deep". Following from this, the tonnage limitation question was raised whether the liability of the plaintiffs, the charterers of the "Danube VIII" were entitled to limit their liability by reference to the tonnage of the tug alone, or whether their liability should be based on the combined tonnage of the tug and the barge. The plaintiffs contended that it should be the former, while the defendants, the charterers of the "Black Deep", contended that the combined figure should be used.

17. Kerr J found merit in the position taken by the defendants, but he nevertheless ruled against them, explaining at page 298

I decide this case in the plaintiffs' favour because I regard myself as bound by what was said in *The Bramley Moore* [1964] P.200 and because I regard the matter as not being any longer res integra in this court. But for that decision I should have decided in favour of the defendants...

18. In both the cases, the barge had collided with the other vessel. In *The Bramley Moore* the barge "Millet" was involved but not the tug the "Bramley Moore". In *The Sir Joseph Rawlinson* both tug and barge were involved. In each case, no liability was found against the barge.

19. In the present case, the Defendants' position was that the barge did not come into contact with the "Goldensari Indah", whereas the Plaintiffs alleged that there was one collision involving the tug, the barge and the "Goldensari Indah".

20. If the "Goldensari Indah" collided with the unmanned dumb barge while the latter was being pushed along by the tug, the collision may be caused by negligence in the navigation of the barge on the part of the tug. But if the barge did not collide with the "Goldensari Indah", can the damage suffered by the "Goldensari Indah" be said to result from any negligence on the part of the tug in the navigation of the barge? It is reasonably arguable that it cannot. Whether or not *The Bramley Moore* is regarded as good law in Singapore (it is not a binding authority here), it is necessary to know if the barge had collided with the "Goldensari Indah" before the limitation tonnage can be determined. The question posed by the Plaintiffs cannot be answered on the existing facts.

21. Even if the Plaintiffs' question is determined, it will not dispose of the action, because there is no agreement on liability. The Plaintiffs say it should be 30:70 between the parties, while the Defendants say that it should be 30:70

between the "Goldensari Indah" and the tug. The Plaintiffs called this "a distinction without a difference" because the Defendants are liable as owners of the tug and the barge. This is not correct. By apportioning liability between the tug and the "Goldensari Indah" the Defendants sought to exclude the barge from liability. The Plaintiffs' apportionment between the parties left the issue open. The two bases of apportionment can lead to different tonnage limitations for the Defendants. This is not a distinction without a difference, and there is no agreement on the apportionment of liability in the face of this.

22. In the light of the foregoing, the Plaintiffs' question cannot be answered fully without a trial to establish if the barge had collided with the "Goldensari Indah", and the answer will not determine the action between the parties while the apportionment of liability remains to be decided. The Plaintiffs have not satisfied the two conditions of r 12(1). The action should go for trial and the dispute over tonnage limitation can be determined together with the other issues between the parties.

Kan Ting Chiu

Judge

Dated: 8 October 1997

Kan Ting Chiu J

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