Judgment in *Begum v Maran (UK) Ltd* [2020] EWHC 1846 (QB)

The defendant, an English company, failed in its application for summary judgment and/or to strike out a claim relating to a death at a third party's shipyard in Bangladesh. Mr Justice Jay's Judgment contains a nuanced application of the tort of negligence to a novel claim, demonstrates the fuzziness in practice of any theoretical line between acts and omissions, and suggests increased corporate exposure for the conduct of third parties when corporates play a significant role in generating dangerous situations.

The Judgment has been appealed and may be most vulnerable in relation to a conclusion that a Bangladeshi one-year limitation period did not apply because the case involved "*environmental damage*" and the "*event giving rise to the damage*" had occurred in England (applying Article 7 of Rome II). Notwithstanding this difficult point (the link between enviromental damage and personal injury), the Judge's analysis of the caselaw and commentary on the liability for harms involving third party wrongdoers could have broader implications for any company tempted to close its metaphorical eyes to overseas human rights violations.

When ships reach the end of their ocean-going lives, they are often sent to yards in south Asia

to be dismantled. Their parts or materials can be recycled, sold or scrapped. "Shipbreaking" is labour intensive. It is also very dangerous. Deaths and injuries are commonplace.

On 30 March 2018, Mohammed Khalil Mollah was working at the Zuma Enterprise yard in Chittagong, Bangladesh. He had worked as a shipbreaker since 2009, working more than 70 hours each week for low pay in hazardous conditions. On the day in question, he was working to demolish an oil tanker previously called the *Maran Centaurus,* which had been beached at Chittagong some six months earlier. The "beaching" method of demolition is common and especially dangerous because ships are driven onto tidal beaches without proper infrastructure and/or safety equipment causing enviromental damage in the process. Mr Mollah fell from the vessel and died.

Mr Mollah's widow brought a claim in England. Rather than sue her husband's employer or the owner of the yard (both Bangladeshi entities), she claims that an English company is responsible for the vessel ending up in Bangladesh, where working conditions were well-known to be extremely dangerous. Proceedings were issued on 11 April 2019, more than one year after Mr Mollah's death. The claimant seeks damages for negligence under the Fatal Accidents Act 1976 or, alternatively, under Bangladeshi law. An additional cause of action based on alleged unjust enrichment was developed but dismissed on the facts.

The defendant company, Maran UK Ltd, is alleged to have provided agency and shipbroking services to arrange the sale of the vessel. The most salient points as to the defendant's alleged role in the events leading to Mr Mollah's death were as follows:

• The vessel was registered to Centaurus Special Maritime Enterprise (CSME), a Liberian company that is part of the Angelicoussis shipping group.

• CSME is wholly owned by Maran Tankers Shipholdings Ltd (MTS), a Cayman company.

• Another Liberian company, also part of the Angelicoussis group, Maran Tankers Management (MTM), operated and managed the vessel, and has a place of business in Greece.

• The defendant English company (also part of the Angelicoussis group) entered into an operating and agency agreement with MTM to provide services in respect of 29 vessels including the Maran Centaurus.

• In August 2017, the defendant agreed to sell the vessel to a cash buyer, Hsejar Maritime Inc (Hsejar), a company incorporated in Nevis, for more than $16 million. (The claimant contends that the real buyer was the Wirana Shipping Corp Pte Ltd, a Singaporean company.)

• The sale completed in early September 2017 under an agreement that provided that the sale was for demolition purposes and that Hsejar would sell the vessel to a "*ship breaker's yard that is competent and will perform the demolition and recycling of the vessel in an environmentally sound manner and in accordance with good health and safety working practices*".

• The defendant's application proceeded on an agreed assumption that the defendant knew that the vessel would be broken up in Bangladesh where the inherently dangerous "beaching" method is used.

The Judge placed no stall in the above contractual provision for responsible recycling because it was known that the vessel would end up in Bangladesh.

The Judge also gave short shrift to an argument that the company was acting in accordance with standard practice insofar as vessels regularly end up in South Asia: *"if standard practice was inherently dangerous, it cannot be condoned as sound and rational even though almost everybody does the same."*

In what circumstances should a company be liable for another company's unsafe working practices? The caselaw and commentary on the responsibility to protect someone from third parties is not straightforward. Crucially, the Judge concluded that the defendant's conduct in arranging the sale, knowing what it knew, should be viewed as a positive act rather than a pure omission to protect the persons who might eventually dismantle the vessel. The Judge added a gloss to the relevant commentary in *Clerk & Lindsell* and the famous case of *Smith v Littlewoods Organisation Ltd* [1987] 1 AC 241 (company not liable for vandals causing a fire in disused cinema that it owned, which damaged adjoining properties) in order to suggest a "*creation of danger principle*". Viewed in this light, the Judge concluded that the defendant was arguably responsible for creating a "*state of danger*".

It did not matter that the defendant had not exercised any control over persons in Bangladesh. The intervening tortious contributions from the Bangladeshi shipyard and/or employer were not deliberate, and the sale of the vessel had created "*a danger which inhered*". The Judge recognised that this develops the law, but concluded that it would be inappropriate to strike out an arguable claim in an area which is "*uncertain across the board and may be developing.*"

It would be unfortunate if the Court of Appeal decides this case based soley on Rome II and limitation because the Judge received only brief submissions on this aspect. It would be preferable to see this expanded "*creation of danger principle*" finessed following a trial.

This case may have ramifications beyond the shipping industry. Corporates that knowingly play a significant role in creating hazardous scenarios may face claims and be unable to shield behind contractual terms that seek to pass the buck.

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