SEMAPHORE

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"Young MLAANZ" Case Note – Patrick Stratmann and Stefanie Andrensek

Tregidga v Pasma Holdings Pty Ltd *[2021] FCA 721*

The decision in *Tregidga v Pasma Holdings* examines the scope of liability of a repair contractor for fire to a vessel under repair.

Facts

The applicant husband and wife, Mr Tregidga and Ms Jenkins, ran the sailing business Allure Cruises Pty Ltd (Allure) in Cairns, Queensland. In 2015, Allure entered an agreement to purchase the Turkish vessel "Miss Angel" (Vessel). The Vessel was to be paid for with money that had been loaned to Allure by the applicants. In order to depart Turkey, the applicants were required to transfer the Vessel into their names, and the loan was forgiven.

Introducing "Young MLAANZ"

In this edition of *Semaphore* we launch the "Young MLAANZ" series of articles, whereby we introduce younger members of the association and invite them to share a case note of interest.

The Vessel required significant repairs. The applicants engaged BSE Cairns Slipway Pty Ltd (BSE) for these repairs via written agreement. In May 2016, the Vessel was slipped at BSE's premises. A month later, Mr Tregidga entered into an oral agreement with Pasma Holdings Pty Ltd (Pasma) for electrical repairs to the Vessel's engine room. During the repair period, a fire broke out in the engine room and extensively damaged the Vessel. The applicants commenced proceedings against Pasma seeking A$1.1 million in damages based on breach of duty in contract, tort and statutory guarantee pursuant to section 60 of the Australian Consumer Law (ACL).

Judgment

Reeves J found the contracting party with Pasma was Allure, not the applicants, so the claim for breach of contract was dismissed. However, it was found Pasma owed a tortious duty of care to the applicants based on their legal and equitable ownership of the Vessel. In addition, although they were third parties to the contract, the applicants were deemed to be "consumers" under the ACL, and so were entitled to damages if a breach of the duty of due care and skill could be shown.

Pasma sought to rely on exclusions in the contract between the applicants and BSE. As it was not a party to the contract, these could not be relied upon.

Despite electrical works being undertaken in the engine room where the fire broke out, Pasma was found to not have breached its duty in tort. The scope of duty was confined to the exercise of reasonable skill and care to prevent damage to the Vessel in the agreed-upon works only. Significantly, this did not require Pasma to undertake any other works necessary to prevent the damage that was sustained, that is, Pasma's duty extended only to hazards associated with the tasks the electrician was doing, and not those arising from other components of the Vessel, including its engine batteries and switchboards.


Maritime law student Patrick Stratmann and lawyer Stefanie Andrensek

In coming to this conclusion, Reeves J considered that Pasma:

- had not been alerted to any defects or hazards associated with the Vessel's electrical system to enable the applicants to rely on Pasma;
- did not notice anything to cause it to believe there were any defects in the Vessel;
- was not required under its agreement with Allure to attend to any defects in the electrical system, beyond the scope of works set out; and
- the potential cause of the fire, being a 240-volt power supply, was not in the control of Pasma, and Pasma could not have done anything to alter the existing risks or defects present in the power supply.

This led Reeves J to conclude that the applicants had failed to establish a "reasonable and definite inference" that Pasma's negligence caused the fire. This finding was equally applied to determining that there was no breach of guarantee under s 60 of the ACL, and the claim was dismissed with costs.

Implications

Tregidga v Pasma Holdings reiterates that, where an omission to act is alleged to have breached a duty, establishing breach must regard whether the discrete omission is contemplated within the scope of duty. In this case, despite the electrician's works in the Vessel's engine room prior to the fire, this did not impose a wider duty to prevent other harm to the Vessel.

Despite the applicants' failure to prove Pasma's breach of consumer guarantee, the case also reaffirms the principle that transacting parties' rights and obligations are not contractually limited. As of July 2021, the consumer guarantee applied to goods and services of A$100,000 or less.

[PANEL ITEM]

Brief Biographies

Patrick Stratmann is a final year Bachelor of Laws (Hons)/Bachelor of Arts student at Monash University. He is the National Legal Case Manager for the Chambers of Chief Justice Alstergren and Deputy Chief Judge Mercuri at the Federal Circuit and Family Court of Australia. Patrick aspires to practice maritime law at the Victorian Bar. He also has a generalist commercial law interest, but is particularly drawn to international sale of goods, trusts and general insurance. As part of his final year studies, Patrick is completing his Honours thesis on the legal and statutory requirements for establishing a circular economy for plastic production and waste in Victoria.

Stefanie Andrensek is a lawyer working with Michelle Taylor on marine insurance matters, with a particular interest in marine pollution. Before commencing practice in 2021, she was the research associate to Justice SC Derrington of the Federal Court of Australia, at the Australian Law Reform Commission, and the tipstaff to Justice Duggan of the Land and Environment Court of NSW. Stefanie has published in *Shipping Australia* and is a research affiliate at Sydney Law School, with a forthcoming publication on waste management.

Indemnity Costs

Following judgement in June 2021, Reeves J subsequently heard submissions from Pasma in November 2021 that the applicants should pay indemnity costs, based on their unreasonable failure to accept a Calderbank offer from Pasma in April 2020. In particular, Reeves J noted that, considering the applicants' infliction of unnecessary costs, that it was "not difficult to conclude that their rejection of the offer was unreasonable".

Plainly, the case serves as a reminder of the fundamental but occasionally-overlooked principle that parties should be cautious in considering pre-litigation settlement offers, with a view to avoid their unreasonable rejection.

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